

***United States Court of Appeals
for the Second Circuit***



APPENDIX

No.

77-6015

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

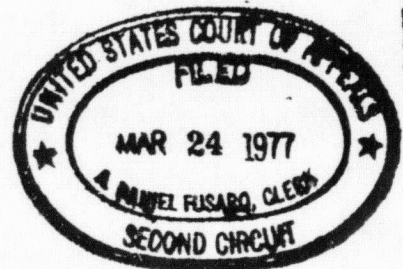
GEORGE WHITE, on behalf of
himself and all others
similarly situated,

Plaintiff-Appellee

v.

DAVID MATHEWS, Secretary of
the Department of Health,
Education, and Welfare, as an
individual and in his
official capacity,

Defendant-Appellant



APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

JOINT APPENDIX

BARBARA ALLEN BABCOCK
Acting Assistant Attorney General

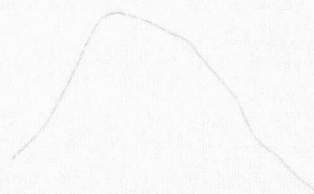
PETER C. DORSEY
United States Attorney

RANDOLPH W. GAINES
Chief of Litigation

THOMAS W. STOUT
Attorney
Office of the General Counsel
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and Welfare.
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Baltimore, Maryland 21235

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525 Main Street
Hartford, Connecticut

PAGINATION AS IN ORIGINAL COPY



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E X H I B I T S

(In Separate Volume)

- Exhibit A - Comm. on Ways and Means, Comm. Staff
Report on the Disability Insurance Program
(GPO, June 1974)
- Exhibit B - Subcomm. on Social Security, Hearings. . .
"Delays in Social Security Appeals" (GPO, 1975)
- Exhibit C - S.R. 94-550 and H.R. 94-679, 94th
Cong., 1st Sess. (1975)
- Exhibit D - Subcomm. on Social Security, Appeals
Process: Areas of Possible Administrative or Legislative
Action (GPO, 1975)
- Exhibit E - P.L. 94-202

1975	NH	PROCEEDINGS
1-27		1. Complaint, motion for a class action and motion to proceed in forma pauperis filed. Motion to proceed in forma pauperis granted. MJB m 1-28-75. Summons issued and together with same and copies of complaint, motions and attested copies of motion to proceed in forma pauperis handed to Marshal for service.
2-6		2. Marshal's return showing service by certified mail.
3-19		3. Interrogatories to a Party Defendant.
"		4. Motion for Production of Documents.
3-21		5. Motion to Determine Propriety of Class Action.
3-21		6. Motion of Alice Lockwood for Permission to Intervene.
3-21		7 Answer filed.
"		8. Appearance of Henry Cohn entered for the defendants.
"		9. Plaintiff Memorandum of Law in Support of his Certification of the Class.
4-1		Placed on Trial List
4-8		10. Defendants Memorandum In Opposition to Plts. Motion to Determine The Propriety of A Class Action.
3-3		11. Appearance of Donald L. Becker. entered for Pltf. (Helen Caldwell)
"		12. Motion of Helen Caldwell to Intervene as Pltf.
4-22		13. Memorandum of Law in Support of Motion to Intervene as Pltf.
5-5		14. Appearance of Robert Wenten entered for the Pltf. G. White
5/8		Pltf. motion for class action over to 5/19/75
5/19		15. Plaintiff's Brief In Support Of His Motion For Certification Of The Class, filed
5/23		HEARING on Pltf. motion to determine propriety of class action. Dec. reserved.
5/23		16 Motion For Order Compelling Discovery (documents), filed by Pltf.
6/23		17 Motion For Order Compelling Discovery (Interrogs), filed by Pltf.
7-18		18 Defendants Answers to Pltf. First Set of Interrogatories.
		19. Defendants Response to Pltf. Request for the Production of Documents.
		Motion to Determine Class Action "The plaintiff's motion, pursuant to Rule 23, F.R. Civ. P., requesting a class action, which would include as plaintiffs all potential Social Security Disability recipients, who have pending petitions for a hearing before the Administrative Law Judge and have not had a hearing scheduled and the matter concluded within a reasonable time, is granted. So Ordered. Clarie J m 7-18-75. Copies mailed to counsel.
8/20		Court Reporter's Notes of Proceedings held on May 19, 1975, filed in Hartford. (Sperber, R.)
12-3		20. Plaintiffs Motion for Summary Judgment
"		21. Plaintiffs Memorandum in Support of Motion for Summary Judgment
12-18		22 Motion for extension of time to file brief until 1/15/76. "Request approve" Clarie, J. m 12-18-75. Copies mailed.
1976		
1-15		23. Def.'s Memo. in Reply to Pltf's Motion for Summary Judg. & in Support of Def.'s Motion for Summary Judg. with Certificate of Serv.
1-15		24. Def.'s Memo. Concerning Lack of Jurisdiction Over the Subject Matter of this Action & Mootness.
1-15		25. Motion to Dismiss Complaint or for Summary Judgment with Request for Oral Argument w/Exhs. 1 & 2 and Attach. A,B,C,D & E.
1-31		26 Defendants Memorandum in reply to plaintiff motion for summary judgment & in support of defendants motion for summary judgment.
2-17		HEARING on Pltf. Motion for summary judgment, and Def't. motion for same or to Dismiss. Pltf. exhibits A,B,C,D,E,F, filed. Brief of Pltf. Re: motion to dismiss and for motion for summary judgment filed, Dec. Reserved.
4-7		Court Reporter's notes of Proceedings held on Feb. 17, 1976, filed in Hartford. (Sperber, R.)
4-9		27 Defendant's reply to pltf memorandum in reply and supplemental memorandum.
5-14		28 Extension of time to file brief for three weeks "Request for time extension is approved. ;So Ordered, Clarie, J. m 5-14-76. Copies to counsel.

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. 75-31
WHITE, George	MATHEWS David,	PAGE 2 OF 2 PAGES

DATE 1976	NR.	PROCEEDINGS
6-11	29	Plaintiffs Reply Brief.
7-21	30	Affidavit of Jan J. Sagett filed.
9-29	31	Ruling on Cross Motions for Summary Judgment and on Motion to Dismiss, Clarie, J. m9-29-76. Copies to counsel. (granted)
10-29	32	JUDGMENT, entered, Clarie, J. m 10-29-76. Copies to counsel of record.
11-8	33	Motion for Reconsideration filed by Def.
11-8	34	Defendant's Brief in Support of His Motion for Reconsideration.
11-12		"motion for reconsideration is denied. So Ordered Clarie, J. m 11-12-76 Copies to counsel
11-12	35	Defendant's Supplemental Brief in Support of its Motion for Reconsideration and/or Clarification.
12-1	36	Supplemental Judgment Order - Clarie, J. m12-1-76. Copies mailed.
1977 1-6	37	Notice of Appeal filed by def. Copies mailed to counsel of record. Certified copies of notice and docket entries mailed to U.S. Court of Appeal and New Haven. Civil Management Plan and Forms C & D mailed to Atty Sweigart.

A TRUE COPY
ATTEST:

WALTER A. HANCOCK
Clerk, U. S. District Court

By: Am m. Hanco
Deputy Clerk

DC-111A (Rev. 1/71)

UNITED STATES DISTRICT COURT

GEORGE WHITE, ET ALS

VS.

CASPER WEINBERGER

CIVIL NO. H-75-34

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United States District Court

FOR THE
DISTRICT OF CONNECTICUT

CIVIL ACTION FILE NO. H-75-34

GEORGE WHITE, on behalf of himself and
all others similarly situated

Plaintiff
v.

SUMMONS

CASPER WEINBURGER, Secretary of the Dept. of
Health, Education and Welfare, individually
and in his official capacity

Defendant

To the above named Defendant :

You are hereby summoned and required to serve upon

Raymond Richard Norko

Holland-Windham Legal Assistance

plaintiff's attorney, whose address

is: P.O. BOX 322

Danielson, Conn. 06239

an answer to the complaint which is herewith served upon you, within 60 days after service of this
summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be
taken against you for the relief demanded in the complaint.

6756-95

SYLVESTER A. MARKOWSKI

Clerk of Court.

JAN 20 1975

Ann M. [Signature]

Deputy Clerk.

Date: January 27, 1975

[Seal of Court]

A True Copy
[Signature]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

FOR THE

DISTRICT OF CONNECTICUT FILED

JAN 27 9 10 PM '75

GEORGE WHITE, on Behalf of Himself
and all others similarly situated,

CLERK
U.S. DISTRICT COURT
HARTFORD, CONN.

PLAINTIFF,

vs.

CASPER WEINBURGER, Secretary of the
Department of Health, Education and
Welfare, as an Individual and in his
official capacity,

DEFENDANT,

C O M P L A I N T

CLASS ACTION

1. This is a class action seeking declaratory and injunctive relief to secure rights and privileges established by Title II of the Social Security Act, 42 United States Code Section 401 et seq. and the Administrative Procedure Act, 5 United States Code Section 555(b), Section 706(1) and guaranteed by the Due Process Clause of the Fifth Amendment to the United States Constitution. This action specifically seeks to declare illegal and unconstitutional the failure of the Defendant's Social Security Administration to schedule Administrative Law Judge Hearings "promptly" and to conclude the matter "within a reasonable" time.

2. Jurisdiction is conferred upon this Court by 28 United States Code Section 1361; 28 United States Code Section 1331 and 5 United

Law Offices
LAND-WINDHAM
AL ASSISTANCE
INC.
Office Box 322
Danishon, Conn.
06239

fied to protect the interests of the members of the class. Plaintiff knows of no conflicts of interests among members of the class.

8. The questions of law and fact raised by Plaintiff are typical of the class, whether the failure of the Defendant, CASPER WEINBURGER to provide a hearing before an Administrative Law Judge within a reasonable period of time violates the Social Security Administration and Administrative Procedure Act and the Due Process Clause of the Fifth Amendment of the United States Constitution.

9. The prosecution of separate actions would create the rush of inconsistent adjudications establishing incompatible standards of conduct for the Defendant. The Defendant has acted on grounds applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

10. The questions of law and fact common to the members of the class predominate any questions affecting only individual members. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Plaintiff knows of no interest of members of the class in individually controlling separate actions.

11. The Administrative Law Judge's Hearings in this Complaint are the sole means that a potential disabled recipient has to challenge the denial of disability of the Social Security Administration. Whether the decision of the Administrative Law Judge goes for or

against the appellant, he is at least entitled to a hearing within a reasonable time to accord him due process of law guaranteed by the United States Constitution.

12. The Plaintiff is a resident of the State of Connecticut, who is attempting to qualify for disability under the Social Security Administration.

13. The Defendant, CASPER WEINBURGER, sued in his individual and official capacity, is the Secretary of the Department of Health, Education and Welfare, and as such has supervisory responsibility over the policies and practices of that department.

14. Plaintiff, GEORGE WHITE, is a 55 year old man, who has completed eight years of school. On August 1, 1974, his doctor certified to the Social Security Administration that the Plaintiff is totally and physically disabled. (See Exhibit A).

15. The Plaintiff, GEORGE WHITE, initially applied for Social Security Administration disability status in 1972. At that time he was declared disabled. He was in a disability status until a review during September of 1973. At that time he was denied further disability status. On February 3rd, 1974, Plaintiff applied for a reconsideration of his denial. The reconsideration was denied on July 11, 1974. On July 19, 1974 Plaintiff applied for a hearing on his denial before an Administrative Law Judge. To this date this hearing has not been scheduled even though approximately 150 days have passed since the request.

16. Plaintiff has not worked since and has a present income of \$105.91 a month from the Veterans Administration. Plaintiff has

also secured help from the Town of Killingly when needed. Plaintiff's wife is also unemployed and collects \$39.00 per week from unemployment compensation.

17. Plaintiff, GEORGE WHITE, has been treated for Laennec's Cirrhosis, chronic and acute pancreatitis, rectal bleeding, and he suffers from frequent headaches, nervousness and weakness in his legs.

18. The Defendant, CASPER WEINBURGER'S actions by failing to provide Plaintiff and members of his class an Administrative Law Judge Hearing within a reasonable period of time violates the Social Security Act and Administrative Procedure Act and the Due Process rights guaranteed to the Plaintiff and his class under the Fifth Amendment to the United States Constitution. The Plaintiff presently has awaited six months for a hearing to be scheduled. [It should be noted to this Court that the Defendant administers a similar program of disability called Supplemental Security Income. This program uses the same hearing mechanics, the same definition of disability but provides under 20 Code of Federal Regulation 416.1455 that the hearing issue be rendered within ninety days].

19. The Defendant, CASPER WEINBURGER under 42 United States Code Section 423 must provide disability benefits to eligible individuals. The Defendant further must provide hearings for the denial of disability benefits under 42 United States Code 405(b).

- Defendant's failure to provide "prompt" hearings under United States Code 405(b) violates the Social Security Act.

20. Plaintiff, as a member of a class of citizens, who requested an Administrative Law Judge Hearing is being severely injured by the Defendant's undue delay in scheduling and rendering a hearing decision within a reasonable time. Under 5 United States Code Section 555(b) the Administrative Procedure Act requires the Defendant to: "within a reasonable time . . . to conclude a matter presented to it." The Defendant's action here violates on its face the spirit and intent of the afore-mentioned section.

21. As a result of Defendant's action, the Plaintiff and the members of his class, have suffered and will continue to suffer irreparable harm from which there is no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray the Court to:

1. Assume jurisdiction of this action.
2. Designate this to be a class action and name the Plaintiff as representative of the class designated.
3. Declare that the Defendant must comply with 5 United States Code 555(b) and United States Code 42 405(b).
4. Declare that the Defendant has denied Plaintiff's Due Process rights guaranteed by the Fifth Amendment by failing to provide prompt hearings and decision within a reasonable ninety day period.
5. That the Court compel the Defendant, pursuant to 28 United States Code 1361, to schedule hearings for the Plaintiff promptly, and for the Defendant to render a decision within ninety days of the request for such hearings.
6. Grant such order and relief as the Court may deem appropriate.

Respectfully submitted,

Raymond Richard Horko

Raymond Richard Horko
Attorney For The Plaintiff
Tolland-Windham Legal
Assistance Program, Inc.
P.O. Box 322
Danielson, Connecticut
06239
Telephone No. (203) 774-0455

STATE OF CONNECTICUT)
COUNTY OF WINDHAM)

ss. Town of Killingly January 17, 1975

VERIFICATION

Before me, the undersigned authority, Commissioner of the Superior Court, in and for the State of Connecticut, personally appeared GEORGE WHITE who being duly sworn according to law deposes and says that the averments in the foregoing Complaint are true and correct to the best of his knowledge, information and belief.

George A. White
GEORGE WHITE

Sworn to before me this 17th day of January, 1975.

RAYMOND RICHARD NORKO
RAYMOND RICHARD NORKO
COMMISSIONER OF THE
SUPERIOR COURT

EXHIBIT A

Telephone 923-9510

SHERMAN L. WALDRON, M.D.

Registry # AW2304864

R. PHILIP COYETTE, M.D.

Thompson Medical Center

Registry # AG2304876

R.F.D. 1, No. Grosvenordale, Connecticut

Hours By Appointment Daily Except Sunday

NAME

DATE

8/1/78

ADDRESS

R

Mr. George E. White
is totally physically
disabled.

M.D.

[Signature]
(R-T-R-71)

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF CONNECTICUT

GEORGE WHITE, on Behalf of Himself *
and all other similarly situated, *

PLAINTIFF, *

vs. *

CASPER WEINBURGER, Secretary of the *
Department of Health, Education and *
Welfare, as an Individual and in his *
official capacity, *

DEFENDANT, *

MOTION FOR CLASS ACTION

Plaintiff in the above-entitled action moves the Court for an order that the action brought as a class action shall be so maintained on the ground that it is a proper class action on all the issues as appears more fully from the allegations of the complaint.

Kaw-R. IN
Raymond Richard Norko
112 Main Street
P.O. Box 322
Danielson, Connecticut
06239
Telephone No. (203) 774-0455

Law Offices
AND WINDHAM
VI. ASSISTANCE
INC.
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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

GEORGE WHITE, on Behalf of Himself
and all others similarly situated,

PLAINTIFF,

vs.

CASPER WEINBURGER, Secretary of the
Department of Health, Education and
Welfare, as an Individual and in his
official capacity,

DEFENDANT,

FILED

JAN 27 4 00 PM '75

CIVIL NO.
U.S. DISTRICT COURT
HARTFORD, CONN.

H75732

MOTION FOR PERMISSION TO PROCEED IN
FORMA PAUPERIS

Pursuant to 28 U.S.C. 1915 the plaintiff respectfully
requests the Court's permission to proceed in forma pauperis.
An affidavit in support of this motion is attached hereto.

PLAINTIFF

By Kau-IR.111
Raymond Richard Norko
His Attorney

ORDER

The foregoing motion having been duly heard, it is hereby
ORDERED that the plaintiff be permitted to proceed in forma
pauperis.

Dated at Hartford, Connecticut this 27 day of Jan, 1975.

M. T. [Signature]
United States District
Judge

Law Offices
AND WINDHAM
AL ASSISTANCE
INC.
Office Box 322
Hartford, Conn.
06112

By [Signature]
Clerk of Court

U.S. DISTRICT COURT
HARTFORD, CONN.

JAN 27 3 30 PM '75

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN
FORMA PAUPERIS

STATE OF CONNECTICUT)
COUNTY OF WINDHAM)

ss. Town of Killingly January 17, 1975

Personally appeared George White of Danielson, Connecticut,
who being duly sworn does hereby state under oath:

1. I am the plaintiff in this action.
2. I have a present source of income of \$105.91 a month
from the Veteran's Administration.
3. My wife is presently unemployed and collects \$39.00 per
week from unemployment compensation.
4. Due to my poverty, I am unable to give security and
pay the costs in this action.
5. I believe in good faith that I am entitled to the
relief sought.
6. I seek to redress the arbitrary and unreasonable
policies of the Social Security Administration in failing to
schedule a hearing and to render a decision based upon my claim
for Social Security disability.

George C White
George White

Subscribed and sworn to before me the day and year written above.

Ray-12.101
Raymond Richard Norko

Offices
WINDHAM
DISTANCE
Box 322
Conn.
1975

72-ffal

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF CONNECTICUT

RECEIVED

MAR 5 1975

U. S. ATTORNEY'S OFFICE
DISTRICT OF CONNECTICUT

GEORGE WHITE AND HELEN CALDWELL,)
on Behalf of Themselves and all)
others similarly situated,)

PLAINTIFFS,)

vs.)

Civil No. H75-34

CASPER WEINBERGER, Secretary of)
the Department of Health, Educa-)
tion and Welfare, as an Individual)
and in his official capacity,)

DEFENDANT,)

INTERVENOR'S COMPLAINT

1. This is a class action seeking declaratory and injunctive relief to secure rights and privileges established by Title II of the Social Security Act, 42 United States Code Section 401 et seq. and the Administrative Procedure Act, 5 United States Code Section 555(b), Section 706(1) and guaranteed by the Due Process Clause of the Fifth Amendment to the United States Constitution. This action specifically seeks to declare illegal and unconstitutional the failure of the Defendant's Social Security Administration to schedule Administrative Law Judge hearings "promptly" and to conclude the matter "within a reasonable" time.

2. Jurisdiction is conferred upon this Court by 28 United States Code Section 1361; 28 United States Code Section 1331 and 5 United

States Code Section 701, Section 704 and Section 706. The matter in controversy exceeds in value, exclusive of interest and cost \$10,000.00.

3. Plaintiffs' action for injunctive and declaratory relief is brought pursuant to 28 United States Code, Sections 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure.

4. The Plaintiffs, on behalf of themselves, and all others similarly situated, bring this action pursuant to Rule 23 or 23(b) or 23(a)(3) of the Federal Rules of Civil Procedure.

5. The Plaintiffs are members of a class, containing upon information and belief, numbering in the hundreds, who are attempting to secure Social Security disability benefits under Section 42 United States Code Section 423 of the Social Security Act across Connecticut. Plaintiffs have requested a hearing before an Administrative Law Judge of the Bureau of Hearings and Appeals in accordance with 42 United States Code 405(b) and 20 Code of Federal Regulation 404.917.

6. The class is so numerous that joinder of all members is impossible.

7. Plaintiffs can fairly and adequately protect the interests of the class. Because of their indigency, Plaintiffs are represented by attorneys from Legal Services Program. These attorneys have experience in the area of Social Security litigation and are

qualified to protect the interests of the members of the class. Plaintiffs know of no conflicts of interests among members of the class.

8. The questions of law and fact raised by Plaintiffs are typical of the class, whether the failure of the Defendant, CASPER WEINBERGER, to provide a hearing before an Administrative Law Judge within a reasonable period of time violates the Social Security Administration and Administrative Procedure Act and the Due Process Clause of the Fifth Amendment of the United States Constitution.

9. The prosecution of separate actions would create the rush of inconsistent adjudications establishing incompatible standards of conduct for the Defendant. The Defendant has acted on grounds applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

10. The questions of law and fact common to the members of the class predominate any questions affecting only individual members. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Plaintiffs know of no interest of members of the class in individually controlling separate actions.

11. The Administrative Law Judge's Hearings in this Complaint are the sole means that a potential disabled recipient has to challenge the denial of disability of the Social Security Administration. Whether the decision of the Administrative Law Judge goes for or against the appellant, he is at least entitled to a hearing with-

in a reasonable time to accord him due process of law guaranteed by the United States Constitution.

12. The Plaintiffs are residents of the State of Connecticut, who are attempting to qualify for disability under the Social Security Administration.

13. The Defendant, CASPER WEINBERGER, sued in his individual and official capacity, is the Secretary of the Department of Health, Education and Welfare, and as such has supervisory responsibility over the policies and practices of that department.

14. Plaintiff GEORGE WHITE is a 55 year old man, who has completed eight years of school. On August 1, 1974, his doctor certified to the Social Security Administration that the Plaintiff is totally and physically disabled. (See Exhibit A).

15. Plaintiff GEORGE WHITE initially applied for Social Security Administration disability status in 1972. At that time he was declared disabled. He was in a disability status until a review during September of 1973. At that time he was denied further disability status. On February 3, 1974, Plaintiff applied for a reconsideration of his denial. The reconsideration was denied on July 11, 1974. On July 19, 1974 Plaintiff applied for a hearing on his denial before an Administrative Law Judge. To this date this hearing has not been scheduled even though approximately 150 days have passed since the request.

16. Plaintiff GEORGE WHITE has not worked since and has a present income of \$105.91 a month from the Veterans Administration. Plain-

tiff has also secured help from the Town of Killingly when needed. Plaintiff's wife is also unemployed and collects \$39.00 per week from unemployment compensation.

17. Plaintiff GEORGE WHITE has been treated for Laennec's Cirrhosis, chronic and acute pancreatitis, rectal bleeding, and he suffers from frequent headaches, nervousness and weakness in his legs.

18. Plaintiff HELEN CALDWELL is a 57 year old woman. On June 10, 1974, her doctor certified to the Social Security Administration that she is not now and likely will never be self-supporting because of serious physical and mental ailments, and on February 27, 1975, her doctor certified that she is permanently and totally disabled. (See Exhibits B and C).

19. Plaintiff HELEN CALDWELL initially applied for Social Security Administration disability status in March of 1974. A decision dated May 31, 1974 denied her application on the basis that she did not meet the disability requirement. On June 18, 1974, Plaintiff applied for a reconsideration of her denial. The reconsideration was denied on July 29, 1974. On November 13, 1974 Plaintiff applied for a hearing on her denial before an Administrative Law Judge. To this date this hearing has not been scheduled even though approximately 100 days have passed since the request.

20. Plaintiff HELEN CALDWELL has not worked since her initial application for disability status. Her present income is \$25.00 per week in support payments from her husband from whom she is

separated plus \$207.00 per month under the Connecticut Medical Aid for the Disabled Program.

21. Plaintiff HELEN CALDWELL applied for assistance under the Connecticut Medical Aid for the Disabled Program after having been denied Social Security disability benefits, and was declared disabled by the State of Connecticut and therefore eligible for said Program on November 6, 1974.

22. Plaintiff HELEN CALDWELL has been treated for cancer in the upper right lobe of her lung, Meniere's Disease, pulmonary emphysema with respiratory insufficiency and depression.

23. The actions of the Defendant CASPER WEINBERGER in failing to provide Plaintiffs and members of their class an Administrative Law Judge Hearing within a reasonable period of time violates the Social Security Act and Administrative Procedure Act and the Due Process rights guaranteed to the Plaintiffs and their class under the Fifth Amendment to the United States Constitution. The Plaintiffs presently have awaited three to six months for hearings to be scheduled. [It should be noted to this Court that the Defendant administers a similar program of disability called Supplemental Security Income. This program uses the same hearing mechanics, the same definition of disability but provides under 20 Code of Federal Regulation 416.1455 that the hearing issue be rendered within ninety days].

24. The Defendant, CASPER WEINBERGER under 42 United States Code Section 423 must provide disability benefits to eligible individuals. The Defendant further must provide hearings for the denial of disability benefits under 42 United States Code 405(b).

25. Plaintiffs, as members of a class of citizens who requested Administrative Law Judge Hearings are being severely injured by the Defendant's undue delay in scheduling and rendering hearing decisions within a reasonable time. Under 5 United States Code Section 555 (b) the Administrative Procedure Act requires the Defendant to: "within a reasonable time . . . to conclude a matter presented to it." The Defendant's action here violates on its face the spirit and intent of the afore-mentioned section.

26. As a result of Defendant's action, the Plaintiffs and the members of their class have suffered and will continue to suffer irreparable harm from which there is no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray the Court to:

1. Assume jurisdiction of this action.
2. Designate this to be a class action and name the Plaintiffs as representatives of the class designated.
3. Declare that the Defendant must comply with 5 United States Code §555(b) and 42 United States Code §405(b).
4. Declare that the Defendant has denied Plaintiffs' Due Process rights guaranteed by the Fifth Amendment by failing to provide prompt hearings and decisions within a reasonable ninety day period.
5. That the Court compel the Defendant, pursuant to 28 United States Code §1361, to schedule hearings for the Plaintiffs promptly and to render decisions within ninety days of the requests for such hearings.
6. Grant such other and further relief as the Court may deem appropriate.

RESPECTFULLY SUBMITTED,

Donald L. Becker
Attorney for the Plaintiffs
Norwalk Legal Services
33 South Main Street
South Norwalk, Connecticut 06854
Phone: (203) 853-3070

Raymond Richard Norko
Attorney for the Plaintiffs
Tolland-Windham Legal Assistance
Program, Inc.
P.O. Box 322
Danielson, Connecticut 06239
Phone: (203) 774-0455

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Intervenor's
Complaint was mailed March 4, 1975, postage prepaid, to:

Henry Cohn, Assistant U.S. Attorney
Hartford Federal Building
450 Main Street
Hartford, Connecticut [6 copies]

Raymond Richard Norko, Esquire
112 Main Street, P.O. Box 322
Danielson, Connecticut 06239

Donald L. Becker
Norwalk Legal Services

EXHIBIT A

Telephone 923-9510

SHERMAN L. WALDRON, M.D.

Registry # AW2384864

R. PHILIP GOYETTE, M.D.

Thompson Medical Center

Registry # AG2384876

R.F.D. 1, No. Grosvenordale, Connecticut

Hours By Appointment Daily Except Sunday

NAME

DATE

8/1/74

ADDRESS

R

Ms. George E. White
is totally physically
disabled.

[Signature]
M.D. (A.T.-R. 71)

THE NORWALK MEDICAL GROUP, P. C.

63 EAST AVENUE

NORWALK, CONNECTICUT 06851

AREA CODE: 203 838-4101

INTERNAL MEDICINE

JAMES J. GRIFFITH, M. D.

INTERNAL MEDICINE-CARDIOLOGY

JOHN J. EACCO, M. D.

WILLIAM M. SULLIVAN, M. D.

ENDOCRINOLOGY

JEROME JOSHUA KLEIN, M. D.

HEMATOLOGY-ONCOLOGY

PAUL L. SCHULMAN, M. D.

ONCOLOGY

ANTHONY G. COSCIA, M. D.

RENAL DISEASES

EDWARD LITTMAN, M. D.

INFECTIOUS DISEASES

ERNEST ATLAS, M. D.

GASTROENTEROLOGY

PAUL E. SCHWARTZ, M. D.

RHEUMATOLOGY

STUART N. NOVACK, M. D.

PULMONARY DISEASES

A. JOEL PAPOWITZ, M. D.

RADIOLOGY CONSULTANTS

RADIOLOGY ASSOCIATES OF
WESTPORT, P. C.

June 10, 1974

TO WHOM IT MAY CONCERN:

Re: Helen Caldwell

Mrs. Caldwell has been under my care since 1966. In September of 1971 Mrs. Caldwell underwent removal of the right upper lobe of her lung for cancer. She also suffers from Meniere's disease, pulmonary emphysema with respiratory insufficiency and depression. These conditions make it quite clear that Mrs. Caldwell is not now, nor is it likely that she will ever be self-supporting.


JEROME J. KLEIN, M.D.

JJK/jm

[EXHIBIT 27]

THE NORWALK MEDICAL GROUP, P. C.

83 EAST AVENUE
NORWALK, CONNECTICUT 06851

AREA CODE: 203 836-4131

INTERNAL MEDICINE

JAMES J. GRIFFITH, M. D.

INTERNAL MEDICINE-CARDIOLOGY

JOHN J. SACCO, M. D.

WILLIAM M. SULLIVAN, M. D.

ENDOCRINOLOGY

JEROME JOSHUA KLEIN, M. D.

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PAUL E. SCHWARTZ, M. D.

RHEUMATOLOGY

STUART N. NOVACK, M. D.

PULMONARY DISEASES

A. JOEL PAPOWITZ, M. D.

RADIOLOGY CONSULTANTS

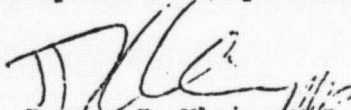
RADIOLOGY ASSOCIATES OF
WESTPORT, P. C.

February 27, 1975

TO WHOM IT MAY CONCERN

Re: Helen Caldwell

Mrs. Caldwell has been under my care since 1966. In September of 1971 Mrs. Caldwell underwent removal of the right upper lobe of her lung for cancer. She also suffers from Meniere's Disease, pulmonary emphysema with respiratory insufficiency and depression. These conditions make it quite clear that Mrs. Caldwell is not now, nor is it likely that she will ever be self-supporting. She is now permanently and totally disabled.


Jerome J. Klein, M.D.

JJK/lb

[EXHIBIT C]

26a

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF CONNECTICUT

GEORGE WHITE, on Behalf of Himself)
and all others similarly situated,)

PLAINTIFF)

vs.)

Civil No. 75/34

CASPER WEINBERGER, Secretary of the)
Department of Health, Education and)
Welfare, as an Individual and in his)
official capacity,)

DEFENDANT,)

MOTION TO INTERVENE AS PLAINTIFF

The applicant for intervention, HELEN CALDWELL, moves, pursuant to Rule 24 of the Federal Rules of Civil Procedure, for leave to intervene in this action, on the ground that she requested a hearing before an administrative law judge on November 13, 1974, to review the denial of her application for Social Security Disability benefits but said hearing has not yet been scheduled even though approximately 100 days have passed since the request, and therefore, she has a substantial interest in this case.

Charles A. Pirro, III
Donald L. Becker
Attorneys for Intervenor
Fairfield County Legal Services
33 South Main Street
South Norwalk, Connecticut 06854
853-3070

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF CONNECTICUT

GEORGE WHITE, on Behalf of Himself)
and all others similarly situated)

PLAINTIFF)

vs.)

NO. 75/34

CASPER WEINBERGER, Secretary of the)
Department of Health, Education and)
Welfare, as an Individual and in his)
official capacity,)

DEFENDANT)

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

Intervenor, HELEN CALDWELL, moves this court for an order permitting her to file this action for declaratory and injunctive relief to secure rights and privileges established by Title II of the Social Security Act, 42 U.S.C. §401 et. seq. and the Administrative Procedure Act, 5 U.S.C. §555(b), §706(1) and guaranteed by the Due Process Clause of the United States Constitution for herself and on behalf of others similarly situated in forma pauperis without prepayment of fees and costs or security therefor as provided in 28 U.S.C. Section 1915 because, as her attached affidavits indicate, she is unable to pay such costs or give security therefor.

Charles A. Pirro, III
Donald L. Becker
Fairfield County Legal Services
33 South Main Street
South Norwalk, Connecticut 06854
853-3070

O R D E R

It is hereby ordered that the within-named intervenor is authorized to proceed with the above-entitled action in forma pauperis, without being required to pay fees and costs or give security therefor.

JUDGE

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF CONNECTICUT

GEORGE WHITE, on Behalf of Himself)
and all others similarly situated,)

PLAINTIFF)

vs.)

Civil No. 75/34

CASPER WEINBERGER, Secretary of the)
Department of Health, Education and)
Welfare, as an Individual and in)
his official capacity,)

DEFENDANT,)

A F F I D A V I T

I, HELEN CALDWELL, being duly sworn, depose and say:

1. I am 57 years old and a citizen of the United States.
2. I reside on Silvermine Avenue, Norwalk, Connecticut.
3. On March 26, 1974, I applied for Social Security Disability benefits which I desperately need because of my limited income and inability to work.
4. My application was denied in a letter from the Social Security Administration dated May 31, 1974, on the basis that I was not considered disabled.
5. On June 18, 1974, I requested reconsideration and submitted medical evidence in support of my request. (See Exhibit A).

6. The Division of Reconsideration informed me in a letter dated July 29, 1974, that my denial was upheld.

7. My request for a hearing before an Administrative Law Judge was filed on November 13, 1974.

8. I received a letter dated December 13, 1974, from Administrative Law Judge Lloyd S. Greenidge informing me that there might be some delay in the hearing.

9. I received another letter dated January 30, 1975 from Judge Greenidge informing me again that there will be additional delay.

10. I have received no notification at all indicating whether this delay may be a matter of days or months.

11. I make this affidavit in support of the case of White v. Weinberger.

HELEN CALDWELL

Subscribed and sworn to before me this _____ day of _____
1975.

Commissioner of the Superior Court

THE NORWALK MEDICAL GROUP, P. C.

83 EAST AVENUE

NORWALK, CONNECTICUT 06851

AREA CODE: 203 836-4101

INTERNAL MEDICINE

JAMES J. GRIFFITH, M. D.

INTERNAL MEDICINE-CARDIOLOGY

JOHN J. SACCO, M. D.

WILLIAM M. SULLIVAN, M. D.

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JEROME JOSHUA KLEIN, M. D.

HEMATOLOGY-ONCOLOGY

PAUL L. SCHULMAN, M. D.

ONCOLOGY

ANTHONY G. COSCIA, M. D.

RENAL DISEASES

EDWARD LITTMAN, M. D.

INFECTIOUS DISEASES

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RHEUMATOLOGY

STUART N. NOVACK, M. D.

PULMONARY DISEASES

A. JOEL PAPOWITZ, M. D.

RADIOLOGY CONSULTANTS

RADIOLOGY ASSOCIATES OF

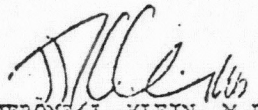
WESTPORT, P. C.

June 10, 1974

TO WHOM IT MAY CONCERN:

Re: Helen Caldwell

Mrs. Caldwell has been under my care since 1966. In September of 1971 Mrs. Caldwell underwent removal of the right upper lobe of her lung for cancer. She also suffers from Meniere's disease, pulmonary emphysema with respiratory insufficiency and depression. These conditions make it quite clear that Mrs. Caldwell is not now, nor is it likely that she will ever be self-supporting.


JEROME J. KLEIN, M.D.

JJK/jm

[EXHIBIT A]

34a

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF CONNECTICUT

GEORGE WHITE, on Behalf of Himself
and all others similarly situated,

PLAINTIFF,

vs.

CASPER WEINFURGER, Secretary of the
Department of Health, Education and
Welfare, as an individual and in his
official capacity,

DEFENDANT,

CIVIL NO. H-75-34

MARCH 17, 1975

INTERVENING COMPLAINT OF

ALICE LOCKWOOD

1. This is a class action seeking declaratory and injunctive relief to secure rights and privileges established by Title II of the Social Security Act, 42 United States Code Section 401 et seq. and the Administrative Procedure Act, 5 United States Code Section 555(b), Section 706(1) and guaranteed by the Due Process Clause of the Fifth Amendment to the United States Constitution. This action specifically seeks to declare illegal and unconstitutional the failure of the Defendant's Social Security Administration to schedule Administrative Law Judge Hearings "promptly" and to conclude the matter "within a reasonable" time.

◇ 2. Jurisdiction is conferred upon this Court by 28 United States Code Section 1361; 28 United States Code Section 1331 and 5 United States Code Section 701, Section 704 and Section 706. The matter in controversy exceeds in value, exclusive of interest and cost \$10,000.

3. Plaintiff's action for injunctive and declaratory relief is brought pursuant to 28 United States Code, Sections 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure.

4. The Plaintiff, on behalf of himself and all others similarly situated, bring this action pursuant to Rule 23 or 23(b) or 23(a) (3) of the Federal Rules of Civil Procedure.

5. The Plaintiff is a member of a class, containing upon information and belief, numbering in the hundreds, who are attempting to secure Social Security disability benefits under Section 42 United States Code Section 423 of the Social Security Act across Connecticut. Plaintiff has requested a hearing before an Administrative Law Judge of the Bureau of Hearings and Appeals in accordance with 42 United States Code 405(b) and 20 Code of Federal Regulation 404.917.

◇

◇ 6. The class is so numerous that joinder of all members is impossible.

7. Plaintiff can fairly and adequately protect the interests of the class. Because of his indigency, Plaintiff is represented by attorneys from Legal Services Program. These attorneys have experience in the area of Social Security litigation and are qualified to protect the interests of the members of the class. Plaintiff knows of no conflicts of interests among members of the class.

8. The questions of law and fact raised by Plaintiff are typical of the class, whether the failure of the Defendant, CASPER WEINBURGER to provide a hearing before an Administrative Law Judge within a reasonable period of time violates the Social Security Administration and Administrative Procedure Act and the Due Process Clause of the Fifth Amendment of the United States Constitution.

9. The prosecution of separate actions would create the rush of inconsistent adjudications establishing incompatible standards of conduct for the Defendant. The Defendant has acted on grounds ◇ applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

10. The questions of law and fact common to the members of the class predominate any questions affecting only individual members. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Plaintiff knows of no interest of members of the class in individually controlling separate actions.

11. The Administrative Law Judge's Hearings in this Complaint are the sole means that a potential disabled recipient has to challenge the denial of disability of the Social Security Administration. Whether the decision of the Administrative Law Judge goes for or against the appellant, he is at least entitled to a hearing within a reasonable time to accord him due process of law guaranteed by the United States Constitution.

12. The Plaintiff is a resident of the State of Connecticut, who is attempting to qualify for disability under the Social Security Administration.

13. The Defendant, CASPER WEINBURGER, sued in his individual and official capacity, is the Secretary of the Department of Health, Education and Welfare, and as such has supervisory responsibility over the policies and practices of that department.

14. Plaintiff, ALICE LOCKWOOD, is a 41 year old woman who has completed eleven years of school. On May 24, 1974, her doctor stated that she would be unable to return to work before September of 1974. On January 24, 1975, another doctor confirmed that she had been disabled and not able to perform any substantial meaningful employment during the previous year (1974). (See exhibit A).

15. The Plaintiff, ALICE LOCKWOOD, applied for Social Security Administration disability status in 1974. On May 8, 1974, she was declared ineligible for benefits. Reconsideration resulted in denial of benefits on June 27, 1974. Another reconsideration resulted in renewed denial of benefits on or about September 10, 1974. On October 15, 1974, Plaintiff applied for a hearing on her denial before an Administrative Law Judge. To this date this hearing has not been scheduled even though approximately 150 days have passed since the request.

16. Plaintiff has not worked since and has a present income of \$173.90 a month from the Welfare Department of the State of Connecticut.

17. Plaintiff, ALICE LOCKWOOD, has been treated for hypertension, renal artery stenosis, and has undergone renal artery reconstruction because of fibromuscular hyperplasia of the renal artery. The Plaintiff suffers from dizziness, nervousness, general debilitation, and tachycardia.

LAW OFFICES
LEGACY, INC.
POST OFFICE BOX 1188
87 MAIN STREET
NORWICH, CONNECTICUT
06250

◇ 18. The Defendant, CASPER WEINBURGER'S actions by failing to provide Plaintiff and members of his class an Administrative Law Judge Hearing within a reasonable period of time violates the Social Security Act and Administrative Procedure Act and the Due Process rights guaranteed to the Plaintiff and his class under the Fifth Amendment to the United States Constitution. The Plaintiff presently has awaited six months for a hearing to be scheduled. (It should be noted to this Court that the Defendant administers a similar program of disability called Supplemental Security Income. This program uses the same hearing mechanics, the same definition of disability but provides under 20 Code of Federal Regulation 416.1455 that the hearing issue be rendered within ninety days).

19. The Defendant, CASPER WEINBURGER under 42 United States Code Section 423 must provide disability benefits to eligible individuals. The Defendant further must provide hearings for the denial of disability benefits under 42 United States Code 405(b). Defendant's failure to provide "prompt" hearings under United States Code 405(b) violates the Social Security Act.

20. Plaintiff, as a member of a class of citizens who requested an Administrative Law Judge Hearing is being severely injured by

◇ the Defendant's undue delay in scheduling and rendering a hearing decision within a reasonable time. Under 5 United States Code Section 555(b) the Administrative Procedure Act requires the Defendant to: "within a reasonable time . . . to conclude a matter presented to it.". The Defendant's action here violates on its face the spirit and intent of the afore-mentioned section.

21. As a result of Defendant's action, the Plaintiff and the members of his class, have suffered and will continue to suffer irreparable harm from which there is no adequate remedy at law.

◇
LAW OFFICES
LEGACY, INC.
POST OFFICE BOX 1186
87 MAIN STREET
NORWICH, CONNECTICUT
06250

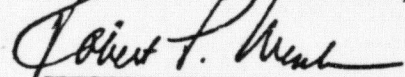
41 a

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays the Court to:

1. Assume jurisdiction of this action.
2. Designate this to be a class action, and name the Plaintiff as a representative of the class designated.
3. Declare that the Defendant must comply with 5 United States Code 555(b) and United States Code 42 405(b).
4. Declare that the Defendant has denied Plaintiff's Due Process rights guaranteed by the Fifth Amendment by failing to provide prompt hearings and decision within a reasonable ninety day period.
5. That the Court compel the Defendant, pursuant to 28 United States Code 1361, to schedule hearings for the Plaintiff promptly, and for the Defendant to render a decision within ninety days of the request for such hearings.
6. Grant such order and relief as the Court may deem appropriate.

Respectfully submitted,



Robert P. Wenten
Attorney for the Intervening
Plaintiff
Legacy, Inc.
P.O. Box 1156
Norwich, Connecticut 06360
Telephone No. (203)889-1365

LAW OFFICES
LEGACY, INC.
POST OFFICE BOX 1156
87 MAIN STREET
NORWICH, CONNECTICUT
06360

STATE OF CONNECTICUT)
) ss. Town of Norwich
COUNTY OF NEW LONDON)

VERIFICATION

Before me, the undersigned authority, Commissioner of the Superior Court, in and for the State of Connecticut, personally appeared ALICE LOCKWOOD who being duly sworn according to law deposes and says that the averments in the foregoing Complaint are true and correct to the best of her knowledge, information and belief.

Alice Lockwood
ALICE LOCKWOOD

Sworn to before me this 20 day of March, 1975.

Robert P. Went

COMMISSIONER OF THE
SUPERIOR COURT

LAW OFFICES
LEGACY, INC.
POST OFFICE BOX 1186
87 MAIN STREET
NORWICH, CONNECTICUT
06260

43a

EXHIBIT "A"

HENRY B. C. LOW, M.D., P.C.
HIROYOSHI TAKATA, M.D.
PHILIP D. ALLMENDINGER, M.D.
LEE H. ELLISON, M.D.

85 JEFFERSON STREET
HARTFORD, CONNECTICUT 06106
246-5553

January 24, 1975

Mr. Robert P. Wenten
Legacy, Inc.
P.O. Box 1156
87 Main Street
Norwich, Connecticut 06360

RE: Mrs. Alice Lockwood

Dear Mr. Wenten:

This is the late reply regarding your inquiry made on December 12 1974 concerning Mrs. Alice Lockwood. As you recall, Mrs. Lockwood has had the recent onset of hypertension which was discovered in September of 1973. On further investigation she was found to have renal artery stenosis and she underwent renal artery reconstruction on May 7th, 1974. Pathology was fibromuscular hyperplasia of the renal artery. Her postoperative course has been quite smooth and her blood pressure has returned in the neighborhood of 130-140 systolic range and 90-100 diastolic range post-operatively. As you know, she has been disabled from this hypertensive disease which was mainly caused by renovascular origin, therefore she has not been able to perform any substantial meaningful employment during the past year.

She will be followed in our office periodically as well as by her own physician, Doctor Theodore DeGroot, for further progress.

With kindest regards.

Sincerely,

Hiro Takata
Hiroyoshi Takata, M.D.

HT/rk

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

GEORGE WHITE, On Behalf of Himself
and all other similarly situated,

PLAINTIFF,

vs.

CASPER WEINBURGER, Secretary of the
Department of Health, Education and
Welfare, as an Individual and in his
official capacity,

DEFENDANT,

CIVIL NO. H-75-34

MARCH 17, 1975

MOTION OF ALICE LOCKWOOD FOR PERMISSION
TO INTERVENE

Alice Lockwood hereby moves the Court for leave to intervene
as a party plaintiff in the above entitled action. In support
of said motion, Ms. Lockwood, by her attorney, respectfully
represents that:

1. Her claims have questions of law in common with those
raised in this action, as is shown by the attached
complaint.
2. Her intervention will not unduly delay or prejudice
the adjudication of the rights of the original parties.

Respectfully submitted,

THE INTERVENING PLAINTIFF
ALICE LOCKWOOD

RECEIVED
MAR 21 1975
U. S. ATTORNEY'S OFFICE
HARTFORD, CONNECTICUT

By Robert P. Wenten

ROBERT P. WENTEN
HER ATTORNEY

LAW OFFICES
LEGACY, INC.
POST OFFICE BOX 1186
87 MAIN STREET
NORWICH, CONNECTICUT
06360

45 a

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

GEORGE WHITE, on Behalf of Himself
and all other similarly situated,

PLAINTIFF,

vs.

CASPER WEINBURGER, Secretary of the
Department of Health, Education and
Welfare, as an individual and in his
official capacity,

DEFENDANT,

CIVIL NO. H-75-34

MARCH 17, 1975

MOTION FOR PERMISSION TO PROCEED IN
FORMA PAUPERIS

Pursuant to 28 U.S.C. 1915 the plaintiff respectfully
requests the Court's permission to proceed in forma pauperis.
An affidavit in support of this motion is attached hereto.

PLAINTIFF

By

ORDER

The foregoing motion having been duly heard, it is hereby
ORDERED that the plaintiff be permitted to proceed in forma
pauperis.

Dated at _____, Connecticut this _____ day of _____
, 1975.

United States District
Judge

LAW OFFICES
LEGACY, INC.
POST OFFICE BOX 1186
87 MAIN STREET
NORWICH, CONNECTICUT
06250

46 a

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN
FORMA PAUPERIS

STATE OF CONNECTICUT)
COUNTY OF NEW LONDON) ss. Town of Norwich MARCH 20, 1975

Personally appeared Alice Lockwood of Norwich, Connecticut,
who being duly sworn does hereby state under oath:

1. I am the plaintiff in this action.
2. I have a present source of income of \$173.90 a month
from the State of Connecticut Department of Welfare.
3. Due to my poverty, I am unable to give security and pay
the costs in this action.
4. I believe in good faith that I am entitled to the relief
sought.
5. I seek to redress the arbitrary and unreasonable
policies of the Social Security Administration in failing to
schedule a hearing and to render a decision based upon my claim
for Social Security disability.

Alice Lockwood
Alice Lockwood

Subscribed and sworn to before me the day and year written above.

Robert P. Wenten
Robert P. Wenten

1420
 "The plaintiff's motion, pursuant to Rule 23, Fed. R. Civ. P., re-
 questing a class action, which would include as plaintiffs all potential
 Social Security Disability recipients, who have pending petitions for a
 hearing before the Administrative Law Judge and have not had a hearing
 scheduled promptly and the matter concluded within a reasonable time,
 is granted. So ordered."

Law Office
 HOLLAND AND WILSON
 LEGAL ASSISTANCE
 INC.
 Post Office Box 322
 Danbury, Conn.
 06239

5-

19 1 16 21 75

U.S. DISTRICT COURT
 DISTRICT OF CONNECTICUT

UNITED STATES DISTRICT COURT
 FOR THE
 DISTRICT OF CONNECTICUT

FILED

MAR 21 4 01 PM '75

U.S. DISTRICT COURT
 HARTFORD, CONN.

GEORGE WHITE, et.al., on Behalf of
 Himself and all Others Similarly
 Situated,

PLAINTIFFS,

vs.

CASPER WEINBERGER, Secretary of the
 Department of Health, Education,
 and Welfare, as an Individual and in
 His Official Capacity,

DEFENDANT

CIVIL ACTION

NO. H 75/34

MOTION TO DETERMINE PROPRIETY OF CLASS ACTION

Plaintiff in the above-entitled action moves the Court for an Order
 that the action brought as a class action shall be so maintained
 on the ground that it is a proper class action on all the issues
 as appears more fully from the allegations of the Complaint.

PLAINTIFF,

By Kay-IC.INL
 Raymond Richard Norko
 His Attorney

48a

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

GEORGE WHITE, On Behalf :
of Himself and all other :
similarly situated, :

Plaintiff :

v. :

CIVIL NO. H-75-34

CASPER WEINBERGER, Secretary :
of the Department of Health, :
Education and Welfare as an :
Individual and in his official :
capacity, :

Defendant :

A N S W E R

Defendant, Casper Weinburger, for his answer states
as follows:

1. With respect to Paragraph 1 defendant states that
class declaratory and injunctive relief would be improper;
denies that plaintiff has been or will be denied any rights or
privileges established by Title II of the Social Security Act,
the administrative procedure act, or the due process clause
of the 5th Amendment.

2. With respect to Paragraph 2, defendant states
that 42 U.S.C. 405(g) is plaintiff's sole basis for jurisdiction
under Title II of the Social Security Act. Defendant further
denies that jurisdiction would lie under 28 U.S.C. 1331,
28 U.S.C. 1361 or 5 U.S.C. 701, 704 or 706, or that the amount
in controversy exceeds \$10,000 in value.

3. With respect to Paragraph 3, defendant denies
that declaratory or injunctive relief is proper under 28 U.S.C.
2201 and 2202.

4. With respect to Paragraph 4, defendant denies that
class certification is proper under the Federal Rules of Civil
Procedure.

5. With respect to Paragraph 5, defendant denies
the first sentence and admits the second sentence.

6. With respect to Paragraphs 6, 8, 9 and 10, defendant denies the allegations of these paragraphs.

7. With respect to Paragraphs 7 and 16, defendant lacks sufficient knowledge with which to plead.

8. With respect to Paragraph 11, defendant denies the allegations of the Paragraph and defendant further states that the Social Security Program provides for a 3 step administrative review and further that plaintiff, White, is pursuing this administrative review process and has been found employable at the two initial stages of the proceedings.

9. With respect to Paragraphs 12 and 13, defendant admits the allegations within except that with respect to Paragraph 13 defendant states that he may be sued only in his official capacity.

10. With respect to Paragraph 14, defendant admits the allegations contained in said Paragraph but states that Exhibit "A" is only one item of evidence and is not dispositive of this claim.

11. With respect to Paragraph 15, defendant admits the allegations contained therein except that defendant states that plaintiff's request for hearing was filed on July 29, 1974.

12. With respect to Paragraph 17, defendant admits the allegations contained in the first clause ending in the word "bleeding" but denies the allegations in the second clause.

13. With respect to Paragraphs 18 and 19, defendant admits the second sentence and denies the remainder of the paragraph.

14. With respect to Paragraphs 20 and 21, defendant denies the allegations contained therein.

CASPER WEINBERGER, Defendant

PETER C. DORSEY
United States Attorney

By: 151 HENRY S. COHN
HENRY S. COHN
Assistant U. S. Attorney

50 a

CERTIFICATION

This is to certify that a copy of the foregoing Answer has been mailed postage paid to: Robert P. Wenten, Esq., Legacy, Inc., P. O. Box 1156, 87 Main St., Norwich, CT 06360 and Raymond Norko, Esq., Tolland-Windham Legal Assistance Inc., P. O. Box 322, Danielson, CT 06239, this 31st day of March, 1975.

151 HENRY S COHN
HENRY S. COHN
Assistant U. S. Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF CONNECTICUT

GEORGE WHITE, On behalf of
himself and all others similarly
situated,

Plaintiff,

v.

DAVID MATHEWS, Secretary of
the Department of Health, Education,
and Welfare, as an individual and
in his capacity as Secretary,

Defendant.

*
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*
*
*
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Civil Action No. H 75/34

AFFIDAVIT OF WILLIAM J. RIVERS

Baltimore County)
)ss
State of Maryland)

I William J. Rivers, being duly sworn, say:

(1) I am Acting Director of the Bureau of Disability Insurance, Social Security Administration, Department of Health, Education, and Welfare, the Bureau responsible for the administration of the Disability Insurance Program under Title II of the Social Security Act.

(2) In connection with my official duties, I have custody of the claims and hearing folders of the plaintiff and wage earner George White, Social Security Account Number 02-01-3423 and the claims and hearing folders of the intervenor and wage earner Helen Caldwell, Social Security Account Number 104-03-4385. These folders have been examined under my direction and supervision and reveal, to the best of my knowledge, information, and belief, the following:

With respect to the folders of plaintiff George White:

a. The wage earner filed an application for disability insurance benefits on August 25, 1972, alleging disability from June 11, 1972, due to cirrhosis of the liver and acute pancreatitis. (Exhibit 1).

It was determined that he became disabled on June 11, 1972 (Exhibit 2), and he was awarded disability benefits of \$204.00 per month effective January 1973, the first month after the statutory 6-month waiting period. (Exhibit 3). In his award notice, the wage earner was advised that

his claim would be reexamined in September 1973.

b. On September 24, 1973, a letter-questionnaire was sent to the wage earner. (Exhibit 4). The letter advised that his claim was being reexamined. He was also asked to complete the questionnaire and return it to the State agency. On September 28, 1973, the wage earner signed and returned the questionnaire to the State agency which received it on October 1, 1973. On this questionnaire he alleged that he was still disabled and that he had last received treatment from Dr. Waldron on March 5, 1973. The State agency wrote to Dr. Waldron on October 5, 1973, requesting medical evidence. (Exhibit 5). Dr. Waldron was invited to use the Remote Telephone Dictation System to expedite his report. A second request was sent to Dr. Waldron on October 9, 1973, (Exhibit 6), and the wage earner was advised by the State agency on that same date that Dr. Waldron had not submitted a report. (Exhibit 7). The wage earner called the State agency on October 12, 1973, and advised that he had a recent examination by Dr. Waldron and that he had been told by the nurse that the report had been sent. (Exhibit 8). The State agency called Dr. Waldron on October 16, 1973, and was advised that the medical report had been sent. (Exhibit 8). The record does not show that any report of an examination by Dr. Waldron in October 1973 was received.

c. The State agency arranged for a consultative examination of the wage earner by Dr. Goyette on November 2, 1973. (Exhibit 9). Dr. Goyette submitted his report of examination on November 20, 1973, and the report was received by the State agency on November 26, 1973. (Exhibit 10). The State agency notified the wage earner on November 27, 1973, that the medical evidence indicated that he had regained his ability to engage in substantial gainful activity in November 1973 and allowed him 10 days to submit additional evidence. (Exhibit 11). On December 4, 1973, Dr. Waldron submitted a one-sentence report, expressing the opinion that the wage earner was totally physically disabled. (Exhibit 12).

d. On December 7, 1973, the State agency determined that the wage earner's disability had ceased in November 1973. (Exhibit 13). This determination was approved by the Bureau of Disability Insurance on December 27, 1973. On January 22, 1974, the wage earner was notified that his disability had been terminated as of November 1973 and that he was last

entitled to benefits for the month of January 1974. (Exhibit 14).

e. On January 30, 1974, the wage earner requested reconsideration of the cessation action, and he indicated that he had no additional evidence to submit. (Exhibit 15). The request was received in the Willimantic District Office on February 4, 1974, and the district office requested the return of the claims folder from BDI. The claims folder was received in the district office on February 26, 1974, and was forwarded to the State agency on February 28, 1974.

f. The State agency received the claims folder on March 4, 1974. They prepared a reconsidered cessation determination, affirming the initial decision as written. (Exhibit 16). The claims folder was received in BDI on March 8, 1974.

g. The Division of Reconsideration reviewed the decision by the State agency and determined that additional medical development was needed to clarify the wage earner's physical and mental status. A memorandum was prepared for transmittal to the State agency on March 30, 1974, and was sent to the BDI medical staff for clearance. (Exhibit 17). The medical staff added additional comments and returned the claim to the Reconsideration staff on April 23, 1974. (Exhibit 18). The memorandum and the claims folder were released to the State agency on May 8, 1974. A date stamp on the transmittal shows it was received in the State agency on May 24, 1974.

h. Plaintiff's attorney, Raymond Morko, was appointed the wage earner's legal representative on March 6, 1974, and wrote a letter of inquiry on April 24, 1974. (Exhibit 19). These documents were not associated with the file, apparently because the claims folder was in transit. On May 8, 1974, the Bureau of Disability Insurance advised the plaintiff that additional medical evidence would be sought to give him every consideration under the law. The attorney wrote another letter on July 9, 1974, after the file had returned to BDI, and a response was made on July 11, 1974. (Exhibit 20).

i. The State agency arranged for a psychiatric consultative examination on June 6, 1974. (Exhibit 21). They also wrote to Dr. Waldron on June 7, 1974, requesting additional medical evidence. (Exhibit 22). The report of the psychiatrist was received on June 13, 1974. (Exhibit 23). On June 18, 1974,

the State agency affirmed the reconsidered cessation, and this decision was approved by the Bureau of Disability Insurance on June 19, 1974. (Exhibit 24). On that same day, Dr. Waldron released further medical evidence concerning plaintiff's condition which was received by the State agency on June 25, 1974. A notice of the reconsideration decision was sent to the wage earner on July 11, 1974, and a copy was sent to attorney Norko. (Exhibit 25).

j. On July 29, 1974, the wage earner, through his attorney, requested a hearing on the issue. (Exhibit 26). On July 31, 1974, the Willimantic District Office sent a telegram to the Bureau of Disability Insurance, Baltimore, Maryland requesting that the claims folder be sent to the administrative law judge at Providence, R.I. (Exhibit 27). This telegram was apparently not associated with the claims folder. On August 30, 1974, the Bureau of Hearings and Appeals, Providence, R.I., requested the claims folder. (Exhibit 28). A second telegram was received from the Bureau of Hearings and Appeals, Providence, R.I., on September 3, 1974, requesting that the claims folder be sent to that office. (Exhibit 29). This telegram was associated with the folder and the claims folder was sent to the Bureau of Hearings and Appeals, Providence, R.I., on September 24, 1974.

k. On September 30, 1974, the claims folder was received by the Bureau of Hearings and Appeals office in Providence, R.I. On October 3, 1974 the same office received a further report from Dr. Waldron which was not germane to the plaintiff's condition (Exhibit 29). On April 2, 1975, the claimant was advised that a hearing had been scheduled. (Exhibit 30). On April 3, 1975, the administrative law judge assigned the case requested the appearance of a medical advisor and of Dr. Langhammer at a hearing scheduled for April 29, 1975, in New London, Connecticut. (Exhibit 31). The hearing was held as scheduled, and the claimant submitted additional evidence at that time. (Exhibit 32). On May 15, 1975, the administrative law judge advised plaintiff's attorney of some evidentiary defects in the record. (Exhibit 33). On May 20, 1975, a reply was received. (Exhibit 34). On May 21, 1975, the administrative law judge responded to plaintiff's attorney and released his decision concerning the merits of plaintiff's claims. (Exhibit 35).

l. On June 4, 1975, plaintiff's attorney submitted additional evidence regarding the claimant. (Exhibit 36). On June 12, 1975, the administrative law judge declined to reopen his decision on the basis of the additional

evidence. (Exhibit 37).

m. On June 25, 1975, the plaintiff's attorney requested Appeals Council review of the plaintiff's claim. (Exhibit 38). Correspondence between the Appeals Council and the plaintiff's attorney concerning the preparation of a free transcript followed. (Exhibit 39). On August 12, 1975, the plaintiff's attorney submitted further photographic evidence. (Exhibit 40).

n. Concurrently, the Appeals Council arranged for a consultative examination of the wage earner on July 31, 1975. (Exhibit 41). Additional evidence obtained from the Veteran's Administration and from Dr. Waldron (Exhibit 41) was entered into the record. In addition, plaintiff's attorney was accorded the opportunity to submit comments or additional evidence (Exhibit 42). On December 3, 1975, the Appeals Council reversed the decision of the administrative law judge and found that the wage earner's disability continued. (Exhibit 42).

On December 16, 1975, the Bureau of Disability Insurance reinstated the wage earner's benefits and a check in the amount of \$3,703.42, representing past-due benefits was sent him.

With respect to the folders of Intervenor Helen Caldwell,

o. The wage earner filed an application for disability insurance benefits on March 26, 1974, alleging disability from February 15, 1974, due to cancer and Meniere's disease (Exhibit 43). On the date of the application she signed forms authorizing the release of medical information (Exhibit 44). The State agency requested medical records concerning the wage earner from the Norwalk Hospital and Dr. Klein, her attending physician, on April 4, 1974. (Exhibit 45). On April 18, 1974, the Norwalk Hospital furnished their records on the wage earner (Exhibit 46), and on April 12, 1974, Dr. Klein's report was received (Exhibit 47). The results of a breathing test requested by the State agency on August 27, 1974, and performed by the wage earner on May 9, 1974, were received by the State agency on May 20, 1974. (Exhibit 48).

p. On May 21, 1974, the State agency made a determination of denial (Exhibit 49), and on May 31, 1974, the Bureau of Disability Insurance informed the wage earner of the decision (Exhibit 50).

q. The wage earner requested reconsideration on June 18, 1974, (Exhibit 51) and submitted another report from Dr. Klein (Exhibit 52). On June 21, 1974,

the State agency requested further information from Dr. Klein (Exhibit 53) to which the physician replied on July 3, 1974 (Exhibit 54). The reply was received by the State agency on July 8, 1974, and on July 12, 1974, the State agency prepared a reconsideration determination of denial which was approved by the Bureau of Disability Insurance on July 24, 1974. (Exhibit 55). The wage earner was informed of the decision on July 29, 1974. (Exhibit 56).

r. On November 12, 1974, the wage earner requested a hearing (Exhibit 57). The district office sent a telegram to the Bureau of Disability Insurance requesting that the claims folder be forwarded to the administrative law judge at Hartford, Connecticut. (Exhibit 58, 59). On November 15, 1974, a medical report form signed by a Dr. Kustera was received by the Bureau of Hearings and Appeals office in Hartford. (Exhibit 60). The claims folder was forwarded to the administrative law judge on November 21, 1974. (Exhibit 59).

s. On December 13, 1974, the wage earner's hearing request was acknowledged by the "Administrative Law Judge In Charge", and she was informed that because of the number of pending hearing requests there might be some delay before her hearing could be held (Exhibit 61). On January 30, 1975, the administrative law judge sent a letter to the wage earner explaining that her hearing had been delayed because of a backlog of cases and that every effort was being made to have her hearing held as soon as possible (Exhibit 62).

t. A request by the wage earner that a pulmonary test done at the Norwalk Hospital on December 13, 1974, be included in the record was received on February 11, 1975. (Exhibit 63). The results of these tests were received from the Hospital on March 21, 1975. (Exhibit 64). On March 17, 1975, a notice that a hearing was to be held on March 24, 1975, was sent to the wage earner. (Exhibit 65). Donald C. Becker, Esq., of the Fairfield County Legal Services, executed a notice that he was representing the wage earner on March 24, 1975. (Exhibit 66). The hearing was held as scheduled. During the hearing, medical statements from Drs. Klein and Minot were entered into the record. (Exhibit 67). Subsequent to the hearing on April 19 and 30, 1975, further medical records were received from the Norwalk Hospital and the Park City Hospital, concerning the wage earner. (Exhibit 68).

u. On May 6, 1975, the administrative law judge rendered a decision granting the wage earner a period of disability commencing on August 30, 1971, (Exhibit 69), and the wage earner and her attorney were notified of the decision on that same date.

v. On May 16, 1975, the Bureau of Disability Insurance effectuated the administrative law judge's allowance. (Exhibit 70). After her benefits had been calculated, the wage earner was sent an award notice on June 27, 1975, informing her that shortly after July 3, 1975, she would receive her first benefit check in the amount of \$3,764.20 and thereafter a check for \$158.80 monthly. (Exhibit 71).

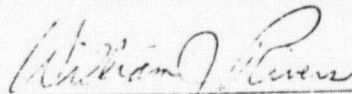
(3) Applications for disability insurance benefits are filed at one of the Social Security Administration District and Branch Offices. The district or branch office representative furnishes information about the eligibility requirements for benefits, which includes, in addition to disability, the insured status requirements and may include age, relationship, and dependency. In the course of the interview, the claimant is asked to supply information on the nature and extent of his impairment, the way it limits both his daily activities and his ability to work, the medical treatment he has received, his education and work experience, and other pertinent facts. He is told of the requirement that he supply medical evidence to support his claim and is asked to identify sources from which evidence may be obtained. He may be given medical report forms, if he wishes, or as is the usual case, the State agency will request reports directly for the claimant when they receive the interview materials.

In the State agency, the case is assigned to a special disability determination unit where determinations are made within the framework of the standards and guides of the Social Security Administration by a team consisting of a physician and a lay specialist, both highly skilled in disability evaluation. All the evidence that the claimant has submitted is examined. The State agency may request from the claimant or from other sources, such additional medical or other evidence as it feels necessary to make a determination of disability.

In about 50 percent of the cases, the initial evidence obtained by the claimant and the State agency from the claimant's earlier medical contacts (his attending physician and other sources of treatment or earlier examination) is sufficient for the medical considerations in the disability decision. When it is not, the evaluation team must obtain clarifying or supplementary evidence either through further communication with the claimant's sources or from independent medical sources. This last course of documentation entails the purchase of a special consultative examination at trust fund expense.

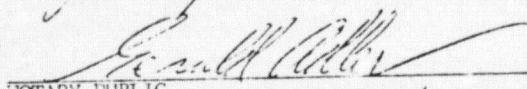
After the State agency has completed its determination, which would in the case of a denial include notification on behalf of the Social Security Administration, the file is sent to the district office to insure that it will be available if plaintiff chooses to pursue his administrative remedies.

If a favorable determination is made, the file is sent through the district office to Baltimore for effectuation and notice. A reconsideration request is processed similarly except that ordinarily a different group in the Social Security Administration and a different team in the State agency reviews the claim. A person who is dissatisfied with the decision in his case can ask to be heard by an administrative law judge of the Social Security Administration, Bureau of Hearings and Appeals. If this decision is against the claimant he may request the Appeals Council to review the case and the Council may do so at its discretion.



WILLIAM J. RIVES
Acting Director, Bureau of Disability Insurance

Subscribed and sworn to before me
this 1st day
of January 1976.



NOTARY PUBLIC

My commission expires 7/1/78



IN THE UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF CONNECTICUT

GEORGE WHITE, On Behalf Of
Himself And All Others
Similarly Situated,

Plaintiff

v.

DAVID MATHEWS, Secretary of
the Department of Health,
Education, and Welfare, as
an individual and in his
capacity as Secretary,

Defendant.

Civil Action No. H75/34

AFFIDAVIT OF DANIEL L. SCHULTZ

County of Arlington)
) ss
State of Virginia)

I, Daniel L. Schultz, being duly sworn, say:

(1) I am the duly directed Acting Director of the Bureau of Hearings and Appeals, Social Security Administration, Department of Health, Education, and Welfare.

(2) The following paragraphs detail the major steps that are required or commonly involved in the processing of the "typical" Title II disability insurance claim at the hearing stage.

(a) Upon receipt of a request for hearing, which may be filed in any office of the Social Security Administration, clerical controls are established, and the case is assigned to an administrative law judge servicing the claimant's geographical area. The existing claim folder, which contains the claimant's collected records, is normally maintained at this point by the Bureau of Disability Insurance in Baltimore, Maryland, and is simultaneously secured and mailed to the designated hearing office.

(b) Upon receipt of the claim folder, the administrative law judge's initial substantive task is a review of the record to determine the necessity for and extent of prehearing development of evidence which may be required for a decision. While Section 404.1523 of the Social Security Administration Regulations No. 4, 20 C.F.R. 404.1523 places the burden of presenting evidence of disability with the claimant, Section 404.927 of Regulations No. 4, 20 C.F.R. 404.927, provides that the administrative law judge "shall inquire fully into the matters at issue . . ." This latter section requires that the administrative law judge assure there is adequate development of all relevant and material evidence that is reasonably available.

Additional development may be required if the available medical evidence is lacking in precision and detail, conflicting, inconclusive, or otherwise deficient. Since a claim is ordinarily disallowed at the initial and reconsideration levels due to the claimant's failure to meet one specific requirement of the statute or the regulations, the adjudicating offices may not have resolved all other factors which may become relevant. An administrative law judge must be prepared to cover all matters relevant to an individual's claim to entitlement in a de novo hearing, and he may, therefore, be required to document heretofore unexplored issues. For example, when a claim for disability benefits was previously denied due to the claimant's failure to meet the special earnings requirements for insured status, the administrative law judge may need to initiate substantial development of medical issues. If the prior denial was based on medical considerations, the administrative law judge may be required to decide questions concerning the claimant's record of earnings or, as it may be relevant to a claim for disability benefits, his age.

Development of medical evidence can be a complex, multistage process involving contacts with a wide variety of medical sources. It is frequently necessary for the administrative law judge to request either directly or indirectly through a local Social Security office or a

designated State Agency, existing evidence from private treating physicians, hospitals, and/or other institutions and agencies. If the required evidence is not forthcoming, the administrative law judge may need to issue subpoenas, as he is empowered to do by Section 404.926 of Regulations No. 4, 20 C.F.R. 404.926. If the administrative law judge concludes that the existing evidence is deficient in quality, extent, or conclusiveness, he may find that it is necessary to request that the cooperating State Agency arrange and schedule one or more special consultative examinations. Sequential examinations may even be necessary. A social worker and a psychologist may, for example, be asked to provide preliminary reports to an examining psychiatrist. As documents and reports are received, they can raise new medical issues, which, in turn, must be explored. Further development can also be required to consider ongoing changes in a claimant's medical condition.

Nonmedical issues such as age and earnings can also involve complex stages and procedures. For example, resolution of questions concerning a claimant's record of earnings may require multiple contacts with employers, exploration of employee-employer relationships and/or review and analysis of business records and tax returns.

(c) In his prehearing consideration of the case, the administrative law judge may conclude that testimony by a vocational expert and/or medical advisor will be essential or desirable to full consideration of the issues. In such instances, the administrative law judge takes the steps necessary to provide the expert with copies of the evidence for prehearing review and study.

(d) In addition, the claimant's right to see the record permeates every step of the decisional process within the Bureau of Hearings and Appeals. Therefore, the administrative law judge may need to provide the claimant or his representative with an opportunity to examine the evidence prior to the hearing.

(e) Upon completion of this prehearing consideration and development of the case, the administrative law judge must fix a time and place for the hearing. While the general rule observed is to schedule hearings according to dates of requests, other factors are also given consideration. For example, if an administrative law judge plans a trip to a particular town, he is expected, for reasons of efficiency, economy, and claimant service, to schedule, to the extent possible, all cases pending in that area, regardless of the dates of requests. It may also be necessary to schedule a hearing out of sequence to account for special circumstances, such as the temporary availability of witnesses, particularly expert witnesses such as physicians or vocational experts, or grave hardship.

(f) Section 404.923 of Regulations No. 4, 20 C.F.R. 404.923, requires the administrative law judge, absent waiver by a party, to mail the parties written notice of hearing not less than ten (10) days prior to the time set for the hearing. If it becomes necessary to change the date or place of the hearing, the administrative law judge must also provide the parties reasonable notice of such change (Section 404.925 of Regulations No. 4).

(g) At the hearing, the claimant is afforded an opportunity to examine the record, to object to proposed exhibits, to submit additional documentary evidence, to testify, to call witnesses, and to state oral arguments as to the facts and law.

(h) Exploration of the issues at the hearing can demonstrate conflicts or inadequacies in the available documentary evidence. In such cases, the administrative law judge's responsibility to inquire fully may require him to seek additional evidence through any or all of the developmental techniques described in item (b) above. Situations also arise in which the administrative law judge must adjourn a hearing or schedule a supplemental hearing for the purpose of receiving additional testimony, such as that of a vocational expert, the need for which was not apparent during prehearing consideration of the case.

(i) Unless the claimant waives his right to see evidence secured after a hearing, he or his representative must be afforded a reasonable opportunity to examine and comment on such evidence.

(j) The administrative law judge is also required, in accordance with provisions of Section 404.930 of Regulations No. 4, 20 C.F.R. 404.930, to provide the parties a reasonable posthearing period to file briefs as to facts or law.

(k) As soon as practicable after completion of the record, the administrative law judge writes and issues his decision.

(3) Current ly, the Bureau of Hearings and Appeals is facing a nationwide problem of backlogs in requests for hearings which extends to residents of Connecticut. The roots of this backlog problem are essentially three-fold -- 1) a very large one-time volume of claims for Black Lung benefits under the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 901 et seq., and the introduction of Title XVI of the Social Security Act, Supplemental Security Income for the Aged, Blind, and Disabled, 42 U.S.C. 1381 et seq., at a time when the program administered under Titles II and XVIII of the Social Security Act, Old Age, Survivors, Disability and Health Insurance was experiencing rapid growth; 2) a lack of flexibility in the use of three distinct corps of legislatively created hearing officers (Title II and XVIII Administrative Law Judges, Black Lung Administrative Law Judges, and SSI Hearing Examiners); and 3) difficulties encountered in appointing additional administrative law judges.

After the inception of the Black Lung program, the Bureau of Hearings and Appeals received approximately 75,000 requests for hearings under this program. Since the Social Security Administration's and this Bureau's jurisdiction over this program was under the legislation temporary ending with claims filed on December 31, 1971 (later extended by P.L. 92-603, §5(1) to June 30, 1973), the Bureau was faced with a massive, one-time workload. It was virtually impossible to appoint administrative law judges to handle this one-time hearing workload, for a

reduction in force which would terminate the appointments axiomatically would follow. In December, 1971, over 2 years after enactment of the Black Lung Program, we received the necessary Congressional authority to appoint a special administrative law judge corps for this program. As an interim measure, the Bureau was required to use our existing Title II administrative law judges to hold a substantial number of Black Lung hearings. This resulted in a further buildup of our pending Title II hearing workload which had independently increased from 42,573 hearing requests in FY 1970 to 76,281 in FY 1974.

In the midst of this problem, Title XVI of the Social Security Act, the Supplementary Security Income program, became effective as of January 1, 1974. The enabling legislation authorized us to appoint hearing examiners under this title. The appointment process which was patterned upon the Civil Service Commission's procedures for the selection of Title II administrative law judges to protect against allegations that the Bureau had selected less than independent, qualified hearing examiners required an extended period of time and required us, as an interim measure, to use Title II administrative law judges for the SSI hearings. In addition, a continuing problem developed with respect to the SSI workload, since many of the SSI claims were coupled with Title II social security claims. In this situation, the Bureau was required to utilize a Title II administrative law judge to hear the case. This lack of flexibility and delays in appointments resulted in a buildup of an abnormally high national hearing backlog which reached an all time high of 113,000 in April, 1975.

(4) After preliminary study, the Social Security Administration has made a concerted effort to reduce the hearings backlog and initiatives have been undertaken since January, 1975 to reduce this backlog and processing times. First a case processing goal was established in an effort to identify more precisely the scope of the remedy required - i.e., to stabilize the workload by the end of FY 1976.

One of the first measures taken to implement this goal was to identify areas where cases could be processed more quickly by the addition of support personnel and/or more sophisticated equipment. From January 1975 through mid-September, 1975, an additional 258 support personnel were authorized for hearings officers who had demonstrated that they could dispose of more cases with such assistance. In addition, the Bureau upgraded the quality of office equipment available to hearing officers, including the placement of over 90 automatic magnetic card typewriters, so that decisions might be rendered more quickly. The first step of an automatic case control and case locator system has been installed and will, when installation is complete, allow for greater management control over the caseload and hopefully a reduction in the volume of reporting required by the hearing officers.

To further relieve the hearings officers of non-judicial functions and/or functions unrelated to the hearing of cases, the Bureau enlarged the professional support staff available to the hearings officers. Initially, experienced central office hearings and appeals analysts were detailed to the hearings officers to assist hearings officers in drafting decisions and obtaining needed medical evidence. In addition, a new program was instituted to hire recent law school graduates to continue and expand this professional staff support.

This latter later program referred to as the Staff Attorney Support Program, was instituted in August 1975 with 160 law graduates attending in-depth training sessions throughout the country. Currently, there are over 200 of these Staff Attorneys with three located in the offices that service the State of Connecticut. Plans are underway to increase this to over 300 Staff Attorneys nationwide. The Staff Attorneys do not, of course, function as adversary counsel for the government. Rather they serve a function analogous to that of a judicial law clerk. The initial results of this program are quite favorable in terms of increasing the productivity of the administrative law judges to whom the legal assistants have been assigned.

The overall impact of all of these initiatives on the hearing process can be seen in the 62% national increase in performance from the lowest point in the fourth quarter of FY 1974 through the end of the first quarter of FY 76. Nationwide, average number of dispositions per hearing officer for the period September 13 through October 10, 1974, was 14.8; the average for the period September 14 through October 11, 1975, was 21.1. In the offices servicing Connecticut, there were also increases in production. For the period September 15, 1974 to January 4, 1975 (monthly figures not available) the average dispositions per administrative law judge was 14 in the Hartford office. For the period September 14, 1975 to December 6, 1975, the average rose to 20.3. In the Providence, Rhode Island office, for the same periods, the average increased from 11 to 15.2, respectively. ^{1/} Overall, the increase in productivity has resulted in a significant reduction of the backlog of pending cases at a rate of about 1,000 cases per month nationwide.

In addition, experience has shown that a substantial number of reversals at the hearing level occur as a result of a deterioration in the claimant's condition or the receipt of new and material evidence, and an "informal remand" procedure was devised in order to award benefits, if possible, without the necessity for a hearing. Accordingly, all pending hearings requests were recently screened for the possibility of immediate favorable action or to obtain additional evidence which could possibly result in such action. These were processed promptly and resulted in favorable action being taken in 5,500 cases. Also, steps have been taken to expedite favorable hearing decisions.

^{1/} At the beginning of the latter period, one of the three Providence administrative law judges, an experienced administrative law judge, left BIA to assume a GS-16 administrative law judge position with another agency. The administrative law judge was replaced by an administrative law judge from the Hartford office who had only entered on duty with BIA in February, 1975. The loss of our "title II" administrative law judges, who are classified by the Civil Service Commission at the GS-15 level, to other federal agencies is a recurring problem. During the period of January, 1973, through April, 1975, 59 Title II administrative law judges separated from service; 14 of these were individuals assuming GS-16 administrative law judge positions. A class of 24 administrative law judges are entering training in January 1976. One of these administrative law judges is scheduled for the Providence office. These 24 entering administrative law judge training are all that could be obtained from an original request for 56.

(5) Realizing that the Bureau of Hearings and Appeals was experiencing a significant problem Congress held extensive hearings during calendar year 1975. As a result of these hearings, Congress passed H.R. 10727 which was signed into law by the President on January 2, 1976, as P.L. 94-202. This law provides the Secretary of Health, Education and Welfare with authority to meld our three existing corps of hearing officers into one corps which can deal flexibly with the hearings workload. This will have a very beneficial impact on the social security hearing workload. We anticipate that it will enable us within one year to reduce the workload to manageable proportions, so that a claimant's average waiting time for a hearing will not exceed ninety days.

(6) Our cumulative experience with the Title II hearings process suggests that a 90-day processing period represents the optimum period that can be expected where (1) oral hearings are held locally; (2) consultative medical examinations and other prehearings development may be required; (3) advance notice of the hearing must be provided; (4) arrangements must be made for appearance of expert witnesses, when required; (5) consultative medical examinations and other posthearings development may be required; and (6) time must be taken to prepare a well-reasoned decision based on a sound record. A 60 day processing time limitation would deprive a claimant of having the record fully developed and would result in cases being denied which could possibly be paid based on a consultative examination or the receipt of other additional evidence.

(7) It would be inappropriate for the Bureau to allocate a sufficient number of personnel to process hearing requests from residents of the State of Connecticut within 60 days as such action would interfere with the rights of other individuals who have filed requests for hearings. To do this for each claimant now awaiting a hearing in Connecticut would require that approximately 56 hearing officers be assigned to the area full-time for a 60 day period. This is equivalent to devoting all of the existing hearing officers in Region I and 60% of those in Region II, plus their

supporting staffs, solely to the State of Connecticut for this period. These regions cover Massachusetts, Connecticut, Maine, New Hampshire, Vermont, Rhode Island, New York, New Jersey, and Puerto Rico. The hearing situation in those places, presently not significantly different from Connecticut, would be substantially worsened.

Daniel L. Schultz
DANIEL L. SCHULTZ
ACTING DIRECTOR
BUREAU OF HEARINGS AND APPEALS

Subscribed and sworn to before me
this 13th day of
January, 1976.

William H. Garrison
NOTARY PUBLIC

My Commission expires: November 29, 1976

IN THE UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF CONNECTICUT

GEORGE WHITE, et al.

Plaintiff

v.

Civil Action No. H75/34

DAVID MATHEWS, SEC.
H.E.W.

Defendant.

A F F I D A V I T

County of Hartford)

ss

State of Connecticut)

I, George White, being duly sworn, say:

1. I am the plaintiff in the above entitled matter, and I am now receiving Social Security disability payments.
2. I was initially receiving payments for disability from 1972. During January of 1974 my payments were discontinued and I began to appeal the decision as I felt I was still disabled.
3. Prior to the cut off mentioned above my sole source of support was from Social Security disability payments.
4. After my checks from Social Security ceased, I was forced to seek assistance from the town of Killingly. I received assistance from March 8, 1974 to present. In fact even though my appeals were successful I have not received my check to date.
5. During the time I received funds from the town of Killingly I received a small amount from the Veteran Administration and my wife received some funds from being unemployed.

6. The assistance I received from the town was in the form of food, clothing and rent.

7. At the present time I owe the Town of Killingly \$2079.80. I have been notified that I must pay this amount back.

8. The amount of funds provided by the town was minimal and did not cover enough to survive in a decent and humane manner.

9. When my social security was terminated in January of 1974 I felt like my world had collapsed.

10. As the time began to drag on awaiting my hearing I became depressed, suffered mental anguish and lost my sense of self worth.

11. The lack of certainty to a man of my age and physical condition caused me to become extremely irritable. I began to fail, become emotional and cried often while waiting for my hearing and subsequent decision.

12. The long delay caused me undue physical and emotional harm. My family, friends and those trying to help me suffered with me.

13. I feel that if the decision on my disability was sooner I would have been spared much pain.

George E. White
GEORGE WHITE

Subscribed and sworn to before me this second day of February 1976.

Ray - R. Norko
RAYMOND RICHARD NORKO

STATE OF CONNECTICUT)
COUNTY OF WINDHAM)

ss. KILLINGLY

FEBRUARY 6, 1976

AFFIDAVIT OF FRANCIS MINEAU

I, FRANCIS MINEAU, being first duly sworn, depose and say:

1. I am a thirty-nine year old male, married and the father of five minor children.
2. My family and I presently reside in Plainfield, Connecticut.
3. I have suffered from infantile paralysis of my right leg and hip since the age of 13 months.
4. This illness, which caused both shortening and weakening of said extremity, necessitates the wearing of a brace and built-up shoe to walk as well as the use of crutches at times to alleviate pain.
5. Previous to 1973, I was principally employed as a chicken ranch farm hand.
6. In 1973, I developed arthritis of the left leg, and this disorder has been growing progressively worse with time.
7. As a result of this combination of polio and arthritis, I have been unable to work as a farm hand since July, 1973.
8. Furthermore, as a result of the above disabilities, I have great difficulty in performing even the most basic of physical activities, such as walking, standing, or sitting for any length of time.

Law Office
HOLLAND WINDHAM
LEGAL ASSISTANCE
INC.
Post Office Box 322
Danielson, Conn.
06239

II.

9. The further result of the arthritis is that I am at times bedridden for days in an attempt to alleviate pain which I suffer.
10. Since July of 1973, I have been unable to be substantially gainfully employed because of said disabilities.
11. On June 24, 1974, I applied for disability benefits through the Willimantic office of the Social Security Administration.
12. Said request was denied on January 6, 1975.
13. On January 16, 1975, I requested a reconsideration of this denial.
14. On February 25, 1975, a determination of the above reconsideration was made which upheld the previous finding of no disability.
15. On March 7, 1975, my request for a hearing was filed in the Willimantic office of the Social Security Administration.
16. In October, 1975, after approximately six months, I requested Congressman Dodd's office to help me find out why I had not yet had my hearing scheduled.
17. Attached to this Affidavit and marked Exhibit A, is the response which was received by Congressman Dodd from the Social Security Administration Bureau of Hearings and Appeals in Providence, Rhode Island.
18. As of the date of this Affidavit, I have been waiting 11 months for a hearing and still have received none.
19. In the past year, the only income which my family and I have received is from State Welfare.

III.

20. During the past year, both my family and I have suffered emotionally as well as economically because of the necessity to depend upon State Welfare to inadequately provide for our basic requirements whereas I feel that I should be receiving my properly earned and needed Social Security disability insurance payments.

Francis R. Mineau
Francis Mineau

Sworn to and subscribed before me, this 6th day of February, 1976.

Harold Mark Lubin
Harold Mark Lubin
Commissioner of the Superior Court.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

Attention
Mrs. Scope
BUREAU OF
HEARINGS AND APPEALS
828 Howard Building
10 Dorrance Street
Providence, R. I. 02903

October 30, 1975

Honorable Christopher J. Dodd
Member of Congress
P. O. Box 1105
Norwich, Connecticut 06360

RE Mr. Francis Mineau
28 1st. St.
Plainfield, Ct. 06374
SSN 041-28-8277

Dear Congressman Dodd:

This is in reference to your inquiry regarding a hearing on the claim for benefits under the Social Security Act filed by the above-named claimant.

As you probably know, cases are heard from each Judge's docket in the order of receipt of the hearing request. If our case load were current, the average processing time would be 90 to 100 days. However, in view of our almost doubled case load due largely to the economic recession, we now need an additional 5 to 6 months.

You are assured that every reasonable effort is being made to hear cases as soon as possible consistent with a full and fair hearing.

Sincerely yours,

Jeremiah F. McCarthy
Jeremiah F. McCarthy
Administrative Law Judge

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NO. 8753-4

GEORGE WHITE

vs.

DAVID MATHEWS

AFFIDAVIT OF ELEANOR VEILLEUX

STATE OF CONNECTICUT))
COUNTY OF WINDHAM) ss. KILLINGLY, CONNECTICUT

JANUARY 28, 1976

I, ELEANOR VEILLEUX, being duly sworn, depose and say that:

1. I am the Welfare Director for the Town of Killingly.
2. That as the Welfare Director the Town of Killingly has been rendering assistance to GEORGE E. WHITE from the period of March 8, 1974 to the present time.
3. The Town of Killingly was rendering assistance to Mr. White because his income was very limited and his Social Security checks were cut off pending an appeal within the Social Security system.
4. Mr. White received a total of \$2,079.00 from the Town of Killingly.
5. These payments were for food, household and personal expenses and for payment of Mr. White's rent.
6. Without these payments, Mr. White would not have been able to survive and live a normal life.

LOUISE WINDHAM
LEGAL ASSISTANCE
INC.
Post Office Box 322
Danielson, Conn.
06239

II.

7. During this period of assistance, Mr. White was observed by me to be suffering from physical and mental trauma due to the pending appeal.

8. The longer the delay in rendering such decision caused Mr. White to decline from a physical and mental standpoint.

9. As the delay progressed, Mr. White's frequency of contact with this office increased.

10. The money given to Mr. White comes from a limited budget that the Town receives to render such services. Mr. White's receipt of this money obviously limits the amount that can be distributed to other persons in need.

Eleanor Velleux
ELEANOR VELLEUX

NOT IN COMPLIANCE WITH THE SUPERIOR COURT OF THE STATE OF VERMONT
1976.

Harold Mark Lubin
HAROLD MARK LUBIN
Commissioner of the Superior Court

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

GEORGE WHITE ET AL

VS.

CIVIL NO. H-75-34

DAVID MATHERS

AFFIDAVIT OF MADELINE WHALEN

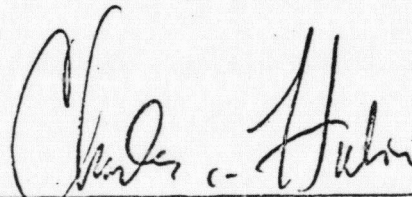
I, Madeline Whalen, after first being duly sworn, hereby depose and say:

1. I am a Social Worker employed by the City Welfare Department of Norwich, Connecticut.
2. During the past three years, I have been the Social Worker assigned to the ALICE LOCKWOOD case.
3. ALICE LOCKWOOD sought, and was given, financial help from City Welfare on September 25, 1973, after she had been injured at work.
4. MS. LOCKWOOD returned to work on October 15, 1973, but was forced by illness to leave her job and go back on City Welfare on November 1, 1973.
5. MS. LOCKWOOD received financial help from City Welfare until March 17, 1975.
6. City Welfare paid a total of \$2,707.44 to MS. LOCKWOOD between September 23, 1973 and March 17, 1975.
7. Monthly payments to MS. LOCKWOOD ranged between \$150.00 and \$175.00. \$102.00 was allocated for rent and utilities. The balance of the monthly payment was intended to meet all of MS. LOCKWOOD's other living expenses.

8. City Welfare was reimbursed by Connecticut State Welfare in the amount of \$1,140.95. This amount represented MS. LOCKWOOD's retroactive State Welfare benefits.

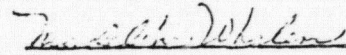
9. When MS. LOCKWOOD first came to us, her physical and mental condition was poor. During the months that followed, she often spoke of the inordinate delay in the granting of her Social Security benefits. This delay was upsetting and aggravating to her; it made her nervous and agitated. In short, it is my opinion that the delay had a substantial negative affect on her health.

I have read the above, and it is true and accurate.



COMMISSIONER OF SUPERIOR COURT

1-30-76


MADELINE WHALEN

IN THE UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF CONNECTICUT

GEORGE WHITE, On Behalf of)
Himself and All Others)
Similarly Situated,)
Plaintiff)

v.)

Civil Action No. H75/34

DAVID MATHEWS, Secretary of)
the Department of Health,)
Education, and Welfare, as)
an Individual and In His)
Capacity as Secretary,)
Defendant.)

A F F I D A V I T

County of Hartford)
)ss
State of Connecticut)

I, Alice Lockwood, being duly sworn, say:

1. Prior to my application for Social Security assistance
I was a bus and cab driver.

2. I have been a hard working person all my life and do not like
to accept charity.

3. My medical problems became so severe after a period of
time I could not work and I sought a determination of disability
from the Social Security Department.

4. After my initial denials and while I was awaiting my hearing
my mental and physical condition deteriorated rapidly.

5. As a result of the long wait it placed a severe strain on my nerves.

6. I also lost weight while I was waiting for my hearing and decision. I normally weigh 124 pounds but went as low as 90 pounds.

7. While I was receiving town assistance I was barely able to survive and never had enough money to eat properly.

8. While I was waiting I could not afford to purchase fresh oranges that were prescribed by my doctor.

9. I received 160 dollars per month of which I paid 102 dollars for rent. The difference is what I had to live on.

10. I feel that I lost my strength due to the inadequate budget I had for food. I feel I have never fully recovered from the lack of a proper diet.

11. I found receiving town assistance humiliating and it greatly lowered my self-respect which I feel I will never regain.

12. I feel if my Social Security benefits were decided promptly I would have not suffered as indicated above.

s/Alice Lockwood
ALICE LOCKWOOD

Subscribed and sworn to this 17 day of February 1976.

s/Raymond Richard Norko
RAYMOND RICHARD NORKO
COMMISSIONER OF THE SUPERIOR COURT

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF CONNECTICUT

100

1992

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Secretary of
Education and Welfare,

Defendant

CIVIL ACTION NO. 75-34

STIPULATION OF FACTS

1. Plaintiff, George White, is a 55 year old man, who has completed eight years of school.
2. Plaintiff, George White, was initially declared disabled in 1970 by the Social Security Administration until 1973 when he was denied further disability status.
3. On July 19, 1974, after being denied on reconsideration, Plaintiff petitioned for a hearing before an Administrative Law Judge.
4. Plaintiff, George White's hearing, was held on April 29, 1975, and the Administrative Law Judge upheld the Social Security Administration in his decision rendered on May 21, 1975.
5. Plaintiff, George White's hearing request and decision took 306 days to complete.
6. Plaintiff, Alice Lockwood, after her initial rejection and failure on reconsideration, petitioned the Social Security

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MUSICIANS, INC.
1000 15th Street, N.W.
Washington, D.C. 20004
(202) 462-1000

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- 2-
- Administration for an Administrative Law Judge hearing on October 15, 1974.
 7. Plaintiff, Alice Lockwood, received her decision from the Administrative Law Judge reversing the initial determination and reconsideration on October 27, 1975.
 8. Plaintiff, Alice Lockwood's hearing request and decision took 376 days to complete.
 9. Plaintiff, Helen Caldwell, requested an Administrative Law Judge hearing on November 13, 1974. This was after an initial determination that she was not disabled and after a reconsideration hearing upheld the initial determination.
 10. Plaintiff, Helen Caldwell's decision was rendered on May 6, 1975, reversing the previous decision of the Administration.
 11. Plaintiff, Helen Caldwell's request for a hearing and final decision took approximately six months.
 12. The backlog of hearing requests was 113,000 in April of 1975.
 13. The defendant received 679 requests for hearing ^{In Connecticut} before an Administrative Law Judge during the 1974 year.
 14. The defendant's Administrative Law Judge hearings averaged 241.8 days, from the time of request for a hearing to the rendering of a final decision during the periods of January, 1973, to March, 1975, in the state of Connecticut.

RESPECTFULLY SUBMITTED,

By /s/ Raymond Richard Wanko
RAYMOND RICHARD WANKO

By /s/ Thomas Stout
THOMAS STOUT

84 a

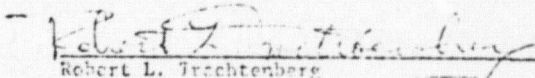
the requests received by the Providence office are from Connecticut residents. Consequently, I estimate that approximately 480 of the Title II disability hearing requests now pending in these offices were filed by Connecticut residents.

3. As of January 31, 1976, there were 96,328 requests for hearing pending before the administrative law judges of the Bureau of Hearings and Appeals. The breakdown of these requests by program was as follows:

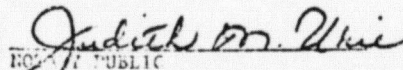
Title XVI - 35,335
Black Lung - 6,453
Titles II and XVIII - 54, 540

Of the 54,540 Title II and XVIII requests, we estimate that 49,100 pertain to Title II disability insurance benefits.

4. The current first year cost of an additional administrative law judge, his staff, supplies, travel, office space, and equipment is approximately \$121,881. This first year cost would decline to \$106,781 annually in succeeding years. These costs do not include any additional costs which his addition may occasion at the regional and central office levels.


Robert L. Trachtenberg
Director, Bureau of Hearings and Appeals
Social Security Administration, Department
of Health, Education, and Welfare

Subscribed and sworn to before
me this 44 day of March
1976.


NOTARY PUBLIC

My Commission expires _____

86 a

B. Affirmances of Initial Denials (From date of request for reconsideration to notice of denial on reconsideration).

Median - 34.0 days
Mean - 44.2 days

William J. Rivers

William J. Rivers
Director, Bureau of Disability Insurance
Social Security Administration

Subscribed and sworn to before
me this 5 day of March
1976.

Gerald Adler
Notary Public



My Commission expires 7/1/78

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

JOHN WHITE, On Behalf Of
and all Others
Similarly Situated,
Plaintiff

vs.

JOHN BATHENS, Secretary of the
Department of Health, Education,
and Welfare, as an individual and
in his capacity as Secretary
Defendant

CIVIL ACTION NO. H75-34

AFFIDAVIT OF JAMES J. SAGETT

County of Arlington)
State of Virginia) ss

I, JAMES J. SAGETT, being duly sworn, say:

1. I am the duly appointed Deputy Director of the Bureau of Hearings and Appeals, Social Security Administration, Department of Health, Education, and Welfare.

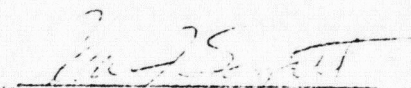
2. An examination of the records pertaining to the Bureau's hearing offices in Hartford, Connecticut, and Providence, Rhode Island, was conducted to obtain information regarding the number of pending requests for title II administrative hearings filed by title II disability insurance applicants or beneficiaries who are residents of Connecticut. The records showed that as of June 30, 1976, there were a total of 673 hearing requests filed by Connecticut residents pending in those offices. Of these, 88 had been pending in excess of 90 days, 121 had been pending in excess of 120 days, and 256 had been pending in excess of 180 days.

3. The records of the Bureau of Hearings and Appeals also show that in Region I, which includes Connecticut, there was a significant increase in hearing request receipts during the first part of 1976 as compared with a similar period in 1975. For the period January to March, 1975, the total number of hearing requests for titles II, XVI, and XVIII was 1,328. For the same period in 1976 the number was 1,668. Thus, although the hearing officers' case production for the latter period had increased by 58%, from 924 to 1,457, it was not enough to keep pace with the receipts.

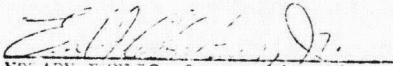
4. Nationwide, the hearing backlog was reduced to 87,860 by June 19. (It is estimated that 47,000 were title II disability cases.) However, total hearing request receipts for FY 76 have been 25% above estimated levels. In addition, because receipts in black lung cases continued at a higher level than estimated (1,000 estimated for FY 76, 4,800 received), we were compelled to retain the black lung administrative law judges in the black lung program longer than originally planned, and thereby did not have them available to deal with the title II and XVI backlogs. When they were converted these black lung administrative law judges, like the converted SSI hearing examiners, had to be trained in new areas of the law, and a learning curve is to be expected before they become fully productive. Our experience with GS-15 administrative law judges has shown a learning curve of about 9 months, and although we are trying to reduce this we do not know whether it can be done. Moreover, since most of the black lung administrative law judges were stationed in areas where there were no permanent EHA offices, they had to be transferred to other offices, causing further disruptions in production. From the standpoint of total professional staffing in the hearing offices, we had anticipated that 728 judges and 400 staff attorneys would be on duty as of July 1, 1976. However, as of June 18, 1976, there were a total of 641 hearing officers and 253 staff attorneys on duty. Because of these factors we have reassessed our earlier expectation that "within one year" the average waiting time for a hearing would be 90 days, and have concluded that it is not possible at present to make an accurate prediction of the date by which this will be achieved.

5. Due to the present backlog of over 5,000 cases in Region I, we plan to have two groups of administrative law judges from outside the Region hear cases in Region I on a temporary basis. The two groups will be sent in sequentially. The first will include 23 administrative law judges and will hear 900-1,000 cases, which should reduce the backlog and the processing

times for the Region by about 20%. The second group will include 25 administrative law judges, and will also hear 900-1,000 cases. This group should reduce the backlog and the processing times by another 20%. We expect this action to lessen the hearing delays in Connecticut.


JAMES J. SAGUTI, Deputy Director
Bureau of Hearings and Appeals
Social Security Administration
Department of Health, Education
and Welfare

Subscribed and sworn to before me
this 15th day of July, 1976.


NOTARY PUBLIC, County of Arlington
State of Virginia

[RECEIVED SEP 10, 1976]

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OCT - 11 1976

U.S. Attorney's Office
NEW HAVEN, CONN.

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CLERK
U.S. DISTRICT COURT
HARTFORD, CONN.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

GEORGE WHITE, on behalf of
himself and all others sim-
ilarly situated

-vs-

DAVID MATHEWS, Secretary of
the Department of Health, Edu-
cation, and Welfare, as an in-
dividual and in his official
capacity

Civil No. H-75-34

RULING ON CROSS MOTIONS FOR SUMMARY
JUDGMENT AND ON MOTION TO DISMISS

The plaintiff, George White, brought this action on behalf of himself and other Connecticut residents who are attempting to assert claims for Social Security disability benefits under 42 U.S.C. § 423, but whose appeals from adverse agency action have been impeded by extensive delays in the scheduling and completion of hearings before an administrative law judge, as provided for in 42 U.S.C. § 405(b) and 20 C.F.R. § 404.917. Plaintiff's class was certified by this Court on July 18, 1975^{1/}. Defendant, the Secretary of the Department of Health, Education and Welfare (HEW), has moved for dismissal based on lack of subject matter jurisdiction and upon mootness. Plaintiff and defendant have in addition entered cross-motions for summary judgment on the merits.

The affidavits and pleadings reveal that this case is a proper one for treatment by summary judgment, there being

no genuine issue as to any material fact separating the parties. Defendant's motion to dismiss is denied, since the Court finds that the case is not moot and the exercise of jurisdiction is not precluded by 42 U.S.C. §§ 405(g) and (h). The plaintiff's motion for summary judgment is granted and the Court finds that the existing delay in processing appeals from adverse agency action is so great as to deprive the plaintiff of his statutory right and his constitutional guarantee of equal protection and due process.

FACTS

There is no dispute as to the central facts in this case, the parties having entered into a stipulation. The named plaintiff^{2/}, a man in his fifties, applied to the Social Security Administration (SSA) for disability benefits in July of 1972, complaining of a variety of physical disabilities, including laennec's cirrhosis and chronic and acute pancreatitis. At that time he was declared totally disabled and began to receive benefits. As a result of a periodic re-examination begun in September of 1973, however, plaintiff was informed — on December 27, 1973 — that he was no longer considered disabled. His benefits were terminated as of January 31, 1974.

He then applied to have his case reconsidered by the SSA, and was informed on July 11, 1974 that his applica-

tion had been denied. White then petitioned on July 29, 1974 for a hearing before an administrative law judge. No hearing^{3/} was held on the matter, however, until April 29, 1975, and the final decision was not rendered thereon until May 21, 1975, when the SSA's earlier decision to terminate White's benefits was upheld. In all, 306 days passed between the date of plaintiff's petition for a hearing and the issuance of the final decision.

The plaintiff's experience with the SSA appeals process is not unique. As a result of various factors discussed in more detail below, an extremely large backlog of cases has developed in the SSA's Hearings and Appeals Bureau. In April of 1975, there was a record total backlog of 113,000 pending cases nationwide.^{4/} The result has been a chronic delay in the disposition of appeals. During the period between January 1973 and March 1975 the average waiting period between an initial request for a hearing and the entry of a final decision was 195.2 days nationally, and 211.8 days for petitions in Connecticut.^{5/} — or, approximately six and one-half and seven months respectively. It is of these general lengthy and persistent delays that the plaintiff complains.

(a) The Social Security Disability System

^{6/}
To establish disability under Title II of the Social Security Act, a wage earner must provide "such medical and other evidence of the existence [of the disability] as the

Secretary may require" in support of the application. 42 U.S.C. § 423(d)(5). This evidence must establish disability by means of "medically acceptable clinical and diagnostic techniques." Id. § 423(d)(3). And it must be shown that the disability in question is sufficiently great that

"[the wage earner] is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work." Id. § 423(d)(2)(A).

To qualify for disability benefits, then, the worker's disability must be total, such that no "substantial gainful work" opportunity exists. The level of benefit payments is based on a variety of factors, including age and the prior average monthly earnings of the worker while employed. Eligibility under Title II of the Social Security Act is not based directly on financial need.

If it is determined that an individual is not disabled, either on an initial application or as the result of a periodic re-examination, a "redetermination hearing" may be sought with the SSA to review the case.^{7/} This review is undertaken on the basis of forms and affidavits submitted to the Agency by the applicant; no face to face meeting takes place at this time.^{8/}

Should the result of the redetermination hearing be adverse to the applicant, he may then petition for a hearing before an administrative law judge.^{9/} At this stage a full evidentiary hearing is held with the applicant in attendance. If the result is again unfavorable, a final discretionary review may be sought before the Appeals Council of the SSA Hearings and Appeals Bureau.^{10/} It was this latter Council that finally overturned the original determination made with respect to plaintiff White in this case.

To judge from the number of reversals at the administrative law judge stage of appellate review the "error rate" in SSA disability determinations is substantial. The incidence of reversals by administrative law judges exceeds 50 percent of all the cases heard.^{11/} The reversal rate is much lower, to be sure, when measured against the total number of original denials, many of which are not appealed.^{12/} However with respect to those individuals who feel sufficiently aggrieved with the Agency's decision to seek an appeal (the relevant class in this case), the prospects for a reversal are substantial. It cannot be persuasively maintained that a pattern of extended delay in the completion of hearings before an administrative law judge is but a matter of small consequence to such aggrieved applicants.

(b) Causes of the Backlog and Remedial Steps Taken

A number of factors have contributed to the existing backlog of appeals cases before administrative law judges.

In the first place, the government represents that a large volume of "black lung" cases have been filed under the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. §§ 901 et seq. While special judges have been appointed to hear these cases, appeals have appeared in such volume that the Hearings and Appeals Bureau has been required to shift some Title II ^{13/} (disability) judges to cover them. Similarly, the enactment of Title XVI of the Social Security Act, Supplemental Security Income for the Aged, Blind and Disabled (SSI), has resulted ^{14/} in extra work for Title II judges.

In addition to such external burdens a variety of internal difficulties have plagued the Bureau. Officials complain of inflexibility in the use of Title XVI hearings officers, ^{15/} of difficulties in recruiting a sufficient number of administrative law judges, and of a growing number of disability appeals.

Steps have been taken both by the SSA and by Congress to reverse the flow of this tide. The Agency has, for instance, substantially increased its support staff, added to the number of administrative judges and hearings officers, and instituted various improved techniques to expedite case processing. Productivity has risen substantially as a result of these and other innovations, ^{17/} although officials point to a deluge of incoming cases which have overwhelmed the improvements ^{18/} in recent months.

Congressional hearings were held in 1975 to probe the backlog problem, and a piece of remedial legislation, P.L. 94-202, was thereafter passed by Congress and signed into law in January of 1976.^{19/} This bill provides the Secretary of HEW with temporary authority to permit the use of SSI hearing examiners to review Title II appeals. It may be noted that during the time P.L. 94-202 was before Congress additional legislation was introduced which would have set an express time limitation on the scheduling and completion of appeals hearings.^{20/} In H.R. 5276, introduced by Rep. Seiberling, a 120-day maximum limit would have been imposed.^{21/} No such time restriction was included in the final legislation, however.

It was originally the aim of the SSA Hearings and Appeals Bureau to reduce the median delay in obtaining a hearing before an administrative law judge to 90 days by July, 1977.^{22/} Recently the Bureau has abandoned this estimate because of shortfalls in administrative law judge recruitment.^{23/} Nevertheless it has been shown that productivity gains are possible to achieve, and defendant anticipates the special assignment of two corps of temporary administrative law judges to Region I (which includes Connecticut) to combat the large backlog in this geographical region. It is estimated that through the use of these judges the Region I backlog can be reduced by 40 per cent.^{24/}

The primary issue to be decided on these facts is

whether or not the administrative hearing delays experienced in the SSA appeals system deprive the plaintiff of statutory or constitutional rights or privileges, thereby justifying action by this Court. For reasons stated below, we conclude that they do.

JURISDICTION AND MOOTNESS

Before reaching the merits, the defendant's motion for dismissal based on mootness and lack of jurisdiction must be addressed. The defendant has taken the position from the outset that subject matter jurisdiction was lacking in this Court by virtue of the restrictions set up within the Social Security Act, 42 U.S.C. §§ 405(g) and ^{25/}(h). The plaintiff has responded that the statutory limitation imposed in these sections extends only to suits "brought to recover on [a] claim arising under [the Social Security]^{26/}," whereas the thrust of plaintiff's present action, they argue, is to expedite disability hearings and not to procure an advance judicial pronouncement on the merits of a particular case.

While the present motions were pending the Supreme Court decided Mathews v. Eldridge No. 74-204, ___ U.S. ___, 44 U.S.L.W. 4224 (Feb. 24, 1976). In that case, the plaintiff argued, pursuant to Goldberg v. Kelly, 397 U.S. 254 (1970) and related cases, that fifth amendment due process necessitates an evidentiary hearing prior to the termination of

disability benefits by the Secretary. The government argued that the Court's interpretation of § 405(h) in Weinberger v. Salfi, 422 U.S. 749 (1975), precluded federal court action, since no "final decision" had been taken by the Agency. The Eldridge Court held, however, that a "sufficiently 'final decision'" had in fact occurred, since Eldridge protested the termination of his benefits and the SSA had rejected the protest. Thus, jurisdiction was found under the Social Security Act itself, 42 U.S.C. § 405(g).

Plaintiff in the present action does not allege jurisdiction under § 405(g). The holding in Eldridge therefore does not redound directly to his benefit. Neither does it stand as an impassible barrier to the maintenance of his action, as defendant strongly contends. Indeed, the principal jurisdictional questions in this case were expressly reserved by the Eldridge Court, when it said:

"Given our conclusion that jurisdiction in the District Court was proper under § 405(g), we find it unnecessary to consider Eldridge's contention that notwithstanding § 405(h) there was jurisdiction over his claim under the mandamus statute, 28 U.S.C. § 1361, or the Administrative Procedures Act, 5 U.S.C. § 701 et seq." Slip Op. at 10 n.2.

What is more, in applying statutory prohibitions on judicial review of agency decisions, the Eldridge Court stressed the need to weigh the specific prayers and allegations in a plaintiff's action against the language and purpose of the

prohibition, placing special emphasis on the need to preserve constitutional claims.^{29/} The Court in Eldridge itself adopted this relational approach, framing the jurisdictional issue as "whether the denial of Eldridge's claim to continued benefits was a sufficiently 'final decision' with respect to his constitutional claim to satisfy the statutory exhaustion requirements."^{30/} It was significant to the Court in analyzing the question that "Eldridge's constitutional challenge is entirely collateral to his substantive claim of entitlement."^{31/}

Here again the question is not whether there has been a "final decision," but whether statutory and constitutional violations have occurred as the result of a delay in final action. Thus plaintiff seeks to avoid § 405(g) rather than to fall under it, arguing that his is not a suit to "recover on any claim arising under" the Social Security Act, but only to have the system operate with reasonable speed. Eldridge offers at least tacit support for this approach, and certainly presents no prohibitive impediment to it. We hold, therefore, on an analysis of Eldridge and of the language in 42 U.S.C. § 405(h), that the latter statute does not bar the Court's assuming jurisdiction of this case exclusive of the limitations provided under § 405(g).^{32/}

It remains to be determined, whether or not sufficient grounds exist for the Court to take up jurisdiction under other statutes, in particular 28 U.S.C. § 1361 (mandamus).

and 5 U.S.C. §§ 701, 704 and 706 (Administrative Procedure Act). Since plaintiff's case is strongest for mandamus jurisdiction, and since that would be a sufficient basis for purposes of this litigation, we analyze it first.

Several courts have recently upheld mandamus jurisdiction on facts similar to those of the present case. Blaken-ship v. Mathews, No. C 75-0185 L(A) (W.D. Ky. May 6, 1976); Sturgill v. Mathews, No. 75-288 (E.D. Ky. Sept. 17, 1975); Barnett v. Weinberger, No. 74-270 (D.Vt. May 6, 1975); cf. Tatum v. Weinberger, No. C 74-351 L(A) (W.D. Ky. Jan. 16, 1975 Nos. 75-1695 and 75-1696 (6th Cir. Sept. 2, 1976). The thrust of these decisions is similar. Mandamus jurisdiction requires that three basic conditions be met: "(1) a clear right in the plaintiff to the relief sought; (2) a plainly denied and preemptory duty on the part of the defendant to do the act in question; and (3) no other adequate remedy available." Lovullo v. Froehlke, 468 F.2d 340, 343 (2d Cir. 1972), cert. denied, 411 U.S. 918 (1973). Here, as in the ^{33/}cases cited, these conditions are met.

In the first place plaintiff has a clear right to the hearing he seeks, 42 U.S.C. § 405(b); 20 C.F.R. § 404.917. Secondly, there is a duty upon the Secretary to perform within a reasonable time and not permit unreasonable delay of administrative action. 5 U.S.C. § 555(b)^{34/}. This sort of duty has been held to be mandatory. Deering Milliken v. Johnston, 295 F.2d 856, 860-61 (4th Cir. 1961); see also, Barnett v. Weinberger, supra. And thirdly, it is the crux of plaintiff's suit that he cannot receive a prompt hearing, a fact, which

on its face, the Secretary does not (and indeed could not successfully) dispute. Thus by definition, there is virtually ^{35/} no other adequate remedy available. Nor can it be argued that since the Secretary's duties are to some measure discretionary, mandamus is precluded. When the actions or inactions of an official greatly exceed the discretion vested in the office, mandamus may be appropriate. Nixon v. Secretary of the Navy, 422 F.2d 934, 939 (2d Cir. 1970); United States ex rel. Schonbrun v. Commanding Officer, 403 F.2d 371, 374 (2d Cir. 1968), cert. denied, 394 U.S. 929 (1969).

The Court concludes that jurisdiction is proper under 28 U.S.C. § 1361. Having reached this conclusion, it is unnecessary to consider alternative bases of ^{36/} jurisdiction.

Defendant also has urged the Court to set aside this case as moot, since White, the named plaintiff, has now received a hearing and a favorable decision from the SSA Appeals Council. The Court does not believe that White's ultimate satisfaction in this matter requires that it dismiss the action. The Supreme Court in Sonsa v. Iowa, ___ U.S. ___, 42 U.S.L.W. 4125 (Jan. 14, 1975), a case on which defendant relies heavily, looked to the date of class certification as a key point in time with respect to mootness determination. Id. at 4127. This might admittedly create some problem for plaintiff, since although White's reversal came in December of 1975 — well after the certification of the class in July, 1975 — White's

hearing before an administrative law judge was held on May 21, 1975, which was well before the certification date. Nevertheless, the Court in Sonsa expressly recognized that in an appropriate case (e.g., where the case becomes moot with respect to named plaintiffs "before the District Court can reasonably be expected to rule on a certification motion") certification may "relate back" to the date of the filing of the complaint. Id. at 4128 n. 11. Here, plaintiff's motion for class certification was filed on March 17, 1975, and a hearing on the motion was held before this Court on May 19, both of which dates precede the earliest point at which the case might have arguably become moot. Under the Sonsa holding, then, and in light of the fact that "a live controversy" persists to this date and has so persisted throughout the proceedings,^{37/} the Court sees no valid reason upon which to declare this case moot.

SUBSTANTIVE CLAIMS

^{38/}
In a supplemental brief, the defendant urged strongly that the plaintiff's constitutional claims were rendered untenable by the decision in Eldridge v. Mathews, supra. In light of defendant's heavy reliance on that case, the Court feels obliged to address the matter briefly.

As stated above, Eldridge involved the claim by a terminated disability recipient that the absence of an

evidentiary hearing before termination deprived him of due process, as the termination of welfare benefits without a prior hearing was found to violate due process in Goldberg v. Kelly, 397 U.S. 254 (1970). Recognizing the validity of Goldberg, but refusing to extend its holding to the facts in Eldridge, the Court restated the calculus which must be applied, on a case by case basis, when assessing the procedural due process clause:

" . . . identification of the specific dictates of due process generally requires consideration of three distinct factors: first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedure would entail." Slip Op. at 12-13.

In denying Eldridge the same pre-termination hearing afforded in Goldberg, the Court distinguished between the ^{39/} necessity for a face to face hearing in either situation, and also between the degree of deprivation likely to be suffered by welfare recipients upon termination of their benefits as ^{40/} compared with Social Security disability recipients. It was concluded that, with respect to plaintiff's particular claim, a difference of constitutional significance existed between welfare recipients and Social Security disability beneficiaries.

The Court in Eldridge did not rule, however, that termination of a disability recipient's benefits is altogether without constitutional significance; indeed, the very opposite was held.^{41/} The Court merely determined that the disability recipient's deprivation was not sufficient to compel an elaborate and expensive addition onto the existing system^{42/} for determining disability. So far as this Court can determine, nothing in Eldridge precludes a finding in plaintiff's favor on the constitutional claims put forth in this case.

Proceeding to the merits, the Court finds this case differs substantially from the case in Eldridge. The nature of the personal interest alleged violated is different to begin with. While Eldridge complained of the SSA's decision to terminate his benefits without a hearing, here the plaintiff seeks to have the appeals process proceed in a more prompt fashion.^{43/} Furthermore, there is a difference in the relevant likelihood of error. Eldridge never filed for a hearing before an administrative law judge, and thus the relevant error rate to consider in his case, as pointed out by the Court,^{44/} was the incidence of reversals with respect to all disability denials. The class in this case, by comparison, consists only of individuals who have taken an appeal. With respect to this class the relevant error rate is far higher^{45/} than was the case in Eldridge, and indeed exceeds 50 percent. Third, there can be far less objection to the remedy sought

here from a public interest standpoint than was true in Eldridge. It has been demonstrated that improvements are possible through which the backlog of SSA appeals cases may be reduced. There is undeniably a cost associated with such improvements, and the Court is mindful that setbacks may occur despite ardent efforts to avoid them. Nevertheless, the question is not whether there shall be costs incurred, but who shall bear them while the governmental machinery responsible for providing appeals puts itself in order.

When the government does not act with reasonable promptness, those claiming total disability are required to bear an unreasonable delay and suffer unwarranted deprivation of that which is lawfully theirs. The Court finds that the lengthy and persistent delays experienced in the Title II disability appeals system in Connecticut averaging 211.8 days between January 1973 and March 1975 (moreover, the intervenor Alice Lockwood was required to wait 376 days for a decision) are ^{46/}unreasonable. Such delay denies due process rights to aggrieved applicants and conflicts with the statutory purposes and provisions of the Social Security and Administrative Procedure Acts. These acts require that the Agency act with reasonable dispatch.

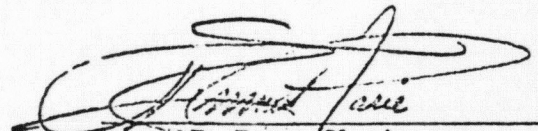
Accordingly within the District of Connecticut the defendant shall, on or before July 1, 1977, have reduced the maximum delay between the filing of a petition for a hearing

- 17 -

before an administrative law judge and the issuance of a final decision to one hundred and eighty (180) days; and furthermore, by the final day of December, 1977, the Secretary shall have reduced the maximum delay to one hundred and fifty (150) days; and finally, by July 1, 1978, the maximum delay shall be one hundred and twenty (120) days. Failing this, any applicant who, on any of these days, has an application for a hearing which has been pending longer than the allotted time, shall be entitled to receive benefits as though favorable action had been taken in his or her case, subject to termination upon a subsequent unfavorable hearing result. Excludable from the foregoing time limitation shall be such periods of delay as are caused directly by a petitioner's own failure to provide essential information for adjudication. The parties will submit within fifteen (15) days a suitable proposed order to accomplish the purposes of this judgment.

SO ORDERED.

Dated at Hartford, Connecticut, this 29th day of September, 1976.


T. Emmet Clarie
Chief Judge

FOOTNOTES

1/ The plaintiff class includes both individuals whose initial petitions for disability have been denied by the Social Security Administration (SSA) and individuals who were at one time declared disabled, but whose benefits have subsequently been terminated by the SSA on the basis of a periodic re-examination.

2/ In addition to plaintiff White, there are two named intervenors in this case. Intervenor Alice Lockwood was denied disability status when she first applied. Lockwood's petition for a hearing before an administrative law judge was filed on October 15, 1974, but she did not receive a final decision until October 27, 1975 — 376 days later. Intervenor Helen Caldwell was also denied disability status on her initial application after undergoing lung cancer surgery; in her case, there was a delay of approximately six months between petition and decision, although she continued to suffer Meniere's disease, pulmonary emphysema and a depressive reaction. Her condition led a medical consultant to remark in a 1974 report that "[i]t is difficult to see how she was denied — on a strict medical!"

3/ Since then, the administrative law judge's ruling has itself been reversed by the Appeals Council of the SSA Hearings and Appeals Bureau. White's benefits have thus been reinstated.

4/ Defendant's Memorandum of Jan. 30, 1976, at 13. This figure represents an "all time high" for the Bureau, and has since been reduced. By June, 1976 the backlog had been lowered to 87,860. Aff. of Jan J. Sagett, July 15, 1976, at 2.

5/ Plaintiff's Memorandum of Dec. 3, 1975, at 5.

6/ The term "disability" is defined in 42 U.S.C. § 423(d) (1)(A) as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months"

7/ Although an applicant for disability benefits initially files with the SSA, the actual determination of disability is

Footnotes (cont'd):

made by an authorized state agency. Likewise, periodic re-examinations are undertaken by the state, and thus it is not until the redetermination hearing stage that the SSA becomes integrally involved in the merits of a given case.

It is true, as defendant contends, that the SSA redetermination hearing is not undertaken in a vacuum, inasmuch as the Agency has before it affidavits based on personal examination of the applicant undertaken by his own doctor and sometimes by doctors assigned by the Agency. Nevertheless, as the reversal rates cited below indicate, there is a basis to stress the importance of a face to face hearing.

9/ See 20 C.F.R. §§ 404.917.

10/ As stressed by the Court in Mathews v. Eldridge, *supra*, no decision issued by the SSA is ever totally "final" in the sense that the applicant's file is retained in order that new evidence may be submitted, should any become available. Moreover, within 60 days after a "final decision" of the Secretary the applicant may obtain a review of the decision in district court. 42 U.S.C. § 405(g).

11/ Committee on Ways and Means, Staff Report on the Disability Insurance Program 1 (July, 1974).

12/ Defendant's Memorandum of Jan. 30, 1976, at 27. If measured against all initial denials of disability, the relevant error rate is approximately 13.5%. If only appeals before the Hearings and Appeals Bureau administrative law judges are considered, the reversal rate becomes a much larger 51.6%.

13/ Defendant's Memorandum of Jan. 30, 1976, at 11-12 (citing affidavit of Daniel Schultz, Director of Bureau of Hearings and Appeals). The initial number of hearing requests under the Black Lung program was 75,000.

14/ *Id.* at 12-13.

15/ Aff. of Daniel L. Schultz, Jan. 15, 1976, at 5.

16/ Defendant's Memorandum of Jan. 30, 1976, at 15.

Footnotes (cont'd):

17/ When measured from the lowest productivity period (the fourth quarter of FY 1974) through the end of the first quarter of FY 1976, there has been a national level productivity increase of 62%. Aff. of Daniel L. Schultz, Jan. 15, 1976, at 8. There has likewise been a marked productivity increase in the Connecticut area. Id.

18/ See Aff. of Jan J. Sagett, July 15, 1976.

19/ Defendant's Memorandum of Jan. 30, 1976, at 16.

20/ Id. at 16-17.

21/ Id.

22/ Statement of Atty. Thomas Stout for defendant to the Court, Feb. 17, 1976.

23/ Aff. of Jan J. Sagett, July 15, 1976, at 2.

24/ Id. at 2-3.

25/ 42 U.S.C. § 405(h) reads, in its relevant part:

"No action against the United States, the Secretary, or any officer or employee thereof shall be brought under section 41 of Title 28 to recover on any claim arising under this subchapter."

In Weinberger v. Salfi, 422 U.S. 749, 756-67 (1975) (Rehnquist, J.), the Court presented quite a restrictive interpretation of § 405(h) in a case where plaintiff sought § 1331 jurisdiction to attack specified Social Security Act provisions as unconstitutional. Salfi involved a substantive attack upon the statute, however, and in this regard is distinguishable from the present case.

26/ 42 U.S.C. § 405(h) (last sentence).

Footnotes (cont'd):

27/ See Mathews v. Eldridge, supra, Slip Op. at 5.

28/ Id. at 4-10.

29/ In a footnote, the Court stated:

"Decisions in different contexts have emphasized that the nature of the claim being asserted and the consequences of deferment of judicial review are important factors in determining whether a statutory requirement of finality has been satisfied. The role these factors may play is illustrated by the intensely 'practical' approach which the Court has adopted . . . when applying the finality requirements of 28 U.S.C. § 1291 . . . and 28 U.S.C. § 1257. . . . [The core principle that statutorily created finality requirements should, if possible, be construed so not to cause crucial collateral claims to be lost and potentially irreparable injuries to be suffered remains applicable.]" Slip Op. at 9 n. 11 (emphasis added).

30/ Id. at 8 (emphasis added).

31/ Id.

32/ Accord, Sturgill v. Mathews, Civ. No. 75-288 (E.D. Ky. Sept. 17, 1975). Cf. So. Windsor Convalescent Home v. Mathews, No. 75-6136 (2d Cir. July 27, 1976), Slip Op. at 5124; Lejeune v. Mathews, 526 F.2d 950, 953 (5th Cir. 1976); Sanders v. Weinberger, 522 F.2d 1167, 1171 (7th Cir. 1975).

33/ The above cited cases are not directly in point, since different Social Security programs or practices were challenged therein. Nevertheless, Blakenship, Sturgill and Barnett involved substantially the same issue as we find here, and the jurisdictional analyses presented in those cases are clearly germane.

Footnotes (cont'd):

34/ "A person compelled to appear in person before an agency or representative thereof is entitled to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative. A party is entitled to appear in person or by or with counsel or other duly qualified representative in any agency proceeding. So far as the orderly conduct of public business permits, an interested person may appear before an agency or its responsible employees for the presentation, adjustment, or determination of an issue, request, or controversy in a proceeding, whether interlocutory, summary, or otherwise, or in connection with an agency function. With due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it. This subsection does not grant or deny a person who is not a lawyer the right to appear for or represent others before an agency or in an agency proceeding." 5 U.S.C. § 555(b) (emphasis added).

35/ Conceivably the Secretary could act on the basis of a complaint addressed to him by an individual aggrieved applicant. But the Secretary is already fully aware of the existing appeals backlog, and it must be concluded that no adequate remedy is available.

36/ The Court expresses no opinion as to whether independent jurisdiction might be available under the Administrative Procedures Act. While it was not relied upon by the plaintiff, on the other hand, it would not seem frivolous to this Court for plaintiff to seek jurisdiction under § 405(g), in light of language in the Eldridge opinion. See note 29 supra.

37/ "There must not only be a named plaintiff who has such a case or controversy at the time the complaint is filed, and at the time the class action is certified by the District Court pursuant to Rule 23,¹¹ but there must be a live controversy at the time this Court reviews the case" 43 U.S.L.W. at 4128.

38/ Defendant's Memorandum of April 9, 1976.

Footnotes (cont'd):

39/ The Court stressed that whereas truthfulness is a frequently material issue in welfare hearings, determinations of disability normally proceed through inspection of medical data which is comparatively objective. Mathews v. Eldridge, supra, Slip Op. at 21-23.

40/ Id. at 17-21. The Court drew only a limited distinction between welfare and Social Security disability recipients with respect to need, sufficient to decide the case in Eldridge:

"In view of the torpidity of this administrative review process . . . and the typically modest resources of the family unit of the physically disabled worker, the hardship imposed upon the erroneously terminated disability recipient may be significant. Still, the disabled worker's need is likely to be less than that of a welfare recipient." Slip Op. at 20 (footnotes omitted).

41/ Id. at 10.

42/ Plaintiff in Eldridge sought to affix a full evidentiary hearing at the outset of the disability termination process. Under the circumstances the Court felt that this particular relief was unwarranted:

"The judicial model of an evidentiary hearing is neither required, nor even the most effective, method of decision making in all circumstances." Slip Op. at 26.

Thus, the Court upheld the constitutionality of the disability appeals structure in its broad outline.

43/ In Fusari v. Steinberg, 419 U.S. 379, 389 (1975), the Court stated that

"the possible length of wrongful deprivation of . . . benefits [also] is an important factor in assessing the impact of official action on private interests."

Footnotes (cont'd):

44/ Mathews v. Eldridge, supra; Slip Op. at 24-25 and n.29.

45/ The Court said in Eldridge that

"[b]are statistics rarely provide a satisfactory measure of the fairness of a decision making process." Slip Op. at 24.

In the context of Eldridge, which involved a qualitative comparison between hearings and administrative determination, this comment had obvious relevance. Here, reversal statistics are probative of a narrower question — i.e., whether the delay experienced by plaintiff is associated with a material deprivation, in light of the reversal rate — and thus the use of statistics in this instance is not subject to the same objections as in Eldridge.

46/ While the period between the filing of a petition for a hearing before an administrative law judge and the issuance of a final decision has been the focus of this analysis, it should not be overlooked that the period of time which ensues between the termination of benefits and their reinstatement in the event of a favorable appeals result is even longer. In the case of plaintiff White, there was a six month interim between the termination of his benefits and the filing of a petition for appeal after final agency action. This period was not included when computing the original 306 day delay, and thus the latter figure — large as it is — does not fully convey the deprivation which occurred.

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OCT 29 1976
U.S. DISTRICT COURT
HARTFORD, CONN.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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U.S. DISTRICT COURT
HARTFORD, CONN.

GEORGE WHITE, on behalf of
himself and all others sim-
ilarly situated

-vs-

DAVID MATHEWS, Secretary of the
Department of Health, Education
and Welfare, as an individual and
in his official capacity

Civil No. H-75-34

JUDGMENT

IT IS HEREBY ORDERED that judgment be entered as fol-
lows:

IT IS HEREBY ADJUDGED that defendant's failure to pro-
vide a prompt administrative hearing and decision for those
Title II disability insurance benefit claimants residing in
the District of Connecticut who request an appeals hearing
before an administrative law judge denies plaintiff's and
his class' constitutional right to due process of law and
conflicts with the provisions of the Social Security Act, 42
U.S.C. § 405 et seq., and the Administrative Procedure Act,
5 U.S.C. § 555(b) et seq.

IT IS FURTHER ORDERED AND ADJUDGED THAT:

(1) The defendant is enjoined, ordered, and directed to
conduct administrative law judge hearings requested pursuant
to § 205(b) of the Social Security Act, 42 U.S.C. § 405(b), by
residents of the District of Connecticut claiming Title II

disability insurance benefits and to issue a written decision thereon within the following time periods:

(a) For any request filed before December 31, 1977, within a maximum time of one hundred eighty (180) days.

(b) For any request filed on or after December 31, 1977, but before July 1, 1978, within a maximum time period of one hundred fifty (150) days.

(c) For any request filed on or after July 1, 1978, within a maximum time period of one hundred twenty (120) days.

For purposes of computing these time periods, the aforementioned periods shall commence with the date of receipt by defendant of a formal written request for hearing filed pursuant to 20 C.F.R. § 404.918 and shall end with the earlier of the date of mailing of the written decision of the administrative law judge or the end of the 180th, 150th or 120th day, as applicable, following defendant's receipt of the written hearing request. In the event that the last day of the periods enumerated in subparagraphs (a) through (c) falls upon a Saturday, Sunday, or legal holiday (as defined by Fed. R. Civ. P. Rule 6(a)) the enumerated periods shall run until the end of the next day which is not a Saturday, Sunday, or legal holiday. The remaining exceptions of the time periods are set out in paragraph(4), infra.

(2) Defendant David Mathews is ordered to grant prospective payments to those claimants who fail to receive

their final decision within the maximum delays expressed in paragraph (1). In these instances, the entitlement shall be the first month after the month in which the maximum time period is exceeded and the last month of the entitlement shall be the month in which a written decision by the administrative law judge is issued. Nothing in this order shall be construed to require the payment of retroactive Title II disability insurance benefits based upon the alleged date of disability onset. Nothing in this order shall be construed to limit defendant's right to recover payments made under this paragraph if it is finally determined that the individual so paid is not under a disability for any period in which payments are made pursuant to this paragraph.

(3) The defendant after scheduling and rendering a decision, in accordance with paragraph (1), infra, shall certify payment to the petitioner with all reasonable dispatch.

(4) Exception from the maximum time periods set out in paragraph (1) occurs in those cases in which the claimant:

(a) Directly causes a delay by his or her own failure to provide essential information for adjudication;

(b) Requests a delay;

(c) Fails to appear for scheduled hearing; or

(d) The administrative law judge as a result of evidence adduced at the hearing or in the course of his post-hearing review in good faith determines that a consultative medical examination or additional medical evidence in the

possession of third parties is required. Provided, however, that the exception from the maximum time limit shall be limited to the time required to produce the evidence. Such additional material shall be obtained with all due diligence.

days

(5) Within sixty (60) days from the date of this decree, defendant David Mathews shall submit to the Court and to the plaintiff's attorneys a detailed statement or plan for implementing the relief required by paragraphs (1) and (2) on a continued basis, and the actual administrative steps taken to effectuate said plan. Any disputes between the parties as to whether the procedure and steps outlined by the defendant will fulfill the requirements of this decree shall be resolved by the Court.

(6) Within sixty (60) days from the date of this decree, defendant David Mathews shall submit to the Court and to the plaintiff's attorneys a detailed statement or chart indicating the number of claimants awaiting hearings or decisions which have not received final administrative action. Furthermore, for each individual claimant so situated, the chart will state the original date of the petition, the date of a hearing, or the final decision.

(7) Beginning with the petitions received on the 61st day after the entry of this decree and continuing thereafter, defendant David Mathews is directed to notify each petitioner for an administrative law judge hearing of his rights under

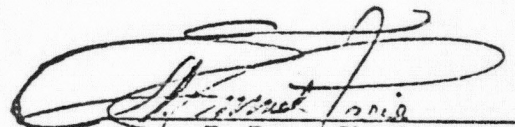
the decree by including a brief statement of the rights received by this decree. Said notice shall be included by attachment to the defendant's acknowledgement of the claimant's request for an administrative law judge hearing. The plaintiff and defendant will provide this Court with an agreed upon statement of notice to the claimant.

(8) This decree shall be binding upon the Secretary of Health, Education and Welfare when adjudicating hearings within the State of Connecticut.

(9) This Court shall retain continuing jurisdiction over this cause for all purposes.

SO ORDERED.

Dated at Hartford, Connecticut, this 28th day of October, 1976.


T. Emmet Clarie
Chief Judge

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FILED
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U.S. DISTRICT COURT
HARTFORD, CONN.

GEORGE WHITE, on behalf of :
himself and all others similarly :
situated, :

Plaintiff :

v. : CIVIL NO. H-75-34

DAVID MATHEWS, Secretary of the :
Department of Health, Education :
and Welfare, as an individual and :
in his official capacity, :

Defendant

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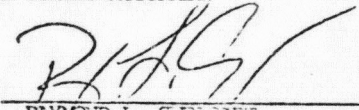
U. S. ATTORNEY'S OFFICE
NEW HAVEN, CONNECTICUT

MOTION FOR RECONSIDERATION

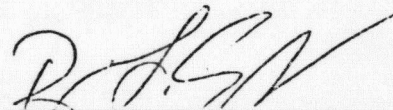
Now comes DAVID MATHEWS, Secretary of the Department of
Health, Education and Welfare, by and through his counsel,
and respectfully moves this Court pursuant to Rules 59 and 60, F.R.C.P.,
for reconsideration of its ruling entered on September 29, 1976
in the above-captioned matter.

DAVID MATHEWS, Secretary of the
Department of Health, Education
and Welfare

PETER C. DORSEY
UNITED STATES ATTORNEY

BY: 
RAYMOND L. SMEIGANT
ASSISTANT UNITED STATES ATTORNEY

This is to certify that a copy of the within and foregoing
Motion for Reconsideration has been mailed to Raymond R. Norko, Esq.,
Legal Aid Society, 525 Main St., Hartford, Connecticut, this 8th
day of November, 1976.

BY: 
RAYMOND L. SMEIGANT
ASSISTANT UNITED STATES ATTORNEY

cc: Department of Health, Education & Welfare
Office of General Counsel
6401 Security Boulevard
Baltimore, Maryland 21235

Attention: Thomas W. Stout, Esq.

Appellate Division
Department of Justice
Washington, D.C. 20530

120 a

"
11/11/76
Motion for reconsideration is denied
So ordered
up. 105.


FILED

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CLERK
U.S. DISTRICT COURT
HARTFORD, CONN.

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF CONNECTICUT

GEORGE WHITE, on behalf of
himself and all others sim-
ilarly situated

vs.

DAVID MATHEWS, Secretary of the
Department of Health, Education,
and Welfare, as an individual
and in his official capacity.

:
:
:
:
: DCivil No. H-75-34
:
:
:
:

SUPPLEMENTAL JUDGMENT ORDER

IT IS HEREBY ORDERED that a Supplemental Judgment be entered
herein as follows:

1. That on 28 October 1976, a Judgment Order was entered by
this Court.
2. The Plaintiff and Defendant have moved for clarification
of said order.

IT IS FURTHER ORDERED AND ADJUDGED THAT:

1. That the grant of prospective payments referred to in
Paragraph 2 of the October 28, 1976 order, shall not be effective
until July 1977.

Entered, this 1st day of December, 1976.



December 27, 1976

Telephone
RTS 934-7007

The Honorable W. Forrest Clarke
Chief United States District Judge
Federal Building
115 Main Street
Hartford, Connecticut 06103

Re: White, et al. v. Mathews
(D. Conn., Civil No. 8-75-34)
(Our ref: CC:SS:10000)

Dear Judge Clarke:

At Attachment A, I have attached a list compiled by the Bureau of Hearings and Appeals, Social Security Administration, which provides the information required by paragraph C of the judgment of October 29, 1976. As you will note, the list does not contain the names and/or account numbers of the claimants listed, but instead utilizes a control number for identification purposes. This procedure has been utilized to insure compliance with Section 1106(a) of the Social Security Act, 42 U.S.C. 1306(a) and 20 C.F.R. 401.1 and is, I believe, acceptable to counsel for the plaintiff.

In addition, I have attached at Attachment B the implementation plan required by paragraph E of the judgment. The Bureau of Hearings and Appeals has further indicated that transfers of pending Connecticut hearing requests to the docket of Administrative Law Judges outside of Connecticut, who have less crowded dockets, has continued since your September 29th ruling in this case. In October and November, transfers from the New Haven and Hartford hearing offices resulted in a reduction of the average docket of the Administrative Law Judges in those offices, and this month additional transfers are planned to further reduce the average pending dockets of Hartford and New Haven judges. Additional transfers are contemplated by the end of January with the possibility of further transfers if required.

BEST COPY AVAILABLE

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If you have any questions, please do not hesitate to contact this office.

Sincerely yours,

Randolph W. Gaines
Chief of Litigation

By _____

Thomas Stout
Attorney

Enclosure

cc:
GC:SS:TSTout:net:clr

123 a

Implementation Plan for White, et al. v. Mathews

A. Hearing Office Procedures

- I. Upon receipt of a Request for Hearing, Form HA-501, in the Hartford, Providence, and New Haven Hearing Offices, on and after December 28, 1976, the docket clerk will examine the request to ascertain if the claimant is a resident of the State of Connecticut, and if it is a title II disability claim.
- II. If the claimant does not reside in the State of Connecticut and it is a title II disability claim, the request for hearing will be processed on a first-in, first-out basis along with the other cases on the docket.
- III. If the claimant is a resident of the State of Connecticut and it is a title II disability claim, the docket clerk will refer the case to the Administrative Law Judge In Charge (ALJIC) of the hearing office who will acknowledge receipt of the request for hearing and forward a copy of the special notice concerning State of Connecticut residents (Tab A) to the claimant.
- IV. If during the course of processing the request for hearing, the claimant:
 - A. fails to provide essential information for adjudication, or
 - B. requests a delay, or
 - C. fails to appear for a scheduled hearing,the claimant will be sent another notice advising that the claim has been removed from the coverage of Judge Clarie's Judgment Order in the George White et al. case, and that the request for hearing will be processed along with other pending requests on a first-in, first-out basis (Tab B).
- V. The ALJIC is responsible for documenting in writing any delays resulting from IV. A., B., or C., above. All requests for delay of the hearing from a claimant must be in writing.
- VI. When an Administrative Law Judge, as a result of evidence adduced at the hearing or in the course of post-hearing review, determines that a consultative medical examination or additional medical evidence in the possession of third parties is required, the claim will be excepted from the Judgment Order, however, the exception is only to the extent of the time required to produce the evidence which shall be obtained with all due diligence. The ALJIC is responsible for sending the claimant a notice that the case is being excepted from the Judgment Order (Tab B).

VII. If a claimant moves from the State of Connecticut before penalty payments commence, coverage under the Judgment Order ceases, and the case will be processed under established Bureau procedures, i.e., the case will be transferred to the hearing office having jurisdiction nearest the claimant's new residence. If penalty payments have been initiated the payments will continue until a decision is issued regardless of changes in residence.

VIII If the claimant has not caused a delay as described above, effective June 10, 1977, in order that benefits may be paid effective July 1, 1977, the ALJIC will, by the 160th day (minus any days used under the exception described in VI., above) from date the request for hearing was filed, examine the file and determine if the request can be processed by the 180th day. 1/ If it is determined that a decision cannot be rendered by the 180th day, the ALJIC is to contact the District Manager of the Hartford, Connecticut, District Office for processing in accordance with Part B of this plan.

IX. The ALJICs in the Hartford, Providence, and New Haven Hearing Offices, are to review all title II disability cases on the Docket each week to determine all State of Connecticut title II disability cases over 120 2/ days from the date of the request for hearing and notify the Regional Chief Administrative Law Judge in Region I via telephone of the actions being taken to process the cases during the given time limitations. This telephone notification will be followed up in writing.

X. The Regional Chief Administrative Law Judge is to prepare a written biweekly report to the Chief Administrative Law Judge which lists chronologically by date of request for hearing all cases reported by the ALJICs. The report shall indicate claimant name, account number, and current status of case. The first report is to have a closeout date of Saturday, January 15, 1977, and is to be furnished to the Chief Administrative Law Judge not later than the close of business January 17, 1977. Reports should be transmitted via the telecopier to the Chief Administrative Law Judge.

XI. On May 2, 1977, all State of Connecticut title II disability cases pending and filed prior to December 28, 1976, should be reviewed and, if still under coverage of the Judgment Order, the ALJICs are to forward to the claimant concerned the notice at Tab A.

These dates will be modified according to the terms of the Judgment Order as follows:

- 1/ 180th day - for hearing requests filed before December 31, 1977.
150th day - for hearing requests filed on or after December 31, 1977,
but before July 1, 1978.
120th day - for hearing requests filed on or after July 1, 1978.
- 2/ 120 - for hearing requests filed before December 31, 1977.
100 - for hearing requests filed on after December 31, 1977, but before
July 1, 1978.
90 - for hearing requests filed on or after July 1, 1978.

- XII. The ALJIC of the hearing office will send prompt notice of issuance of an unfavorable decision to the Hartford DO in those cases identified under paragraph VII of this plan.

B. Payment Procedures

1. General

- A. All cases which are affected by the court order in the case of George White, et al. v. Mathews will be handled in one location- the Hartford District Office. The Hartford DO will be responsible for (1) obtaining the current address and the latest benefit amount information, and (2) for initiating and terminating payments.
- B. The BIA Administrative Law Judges In Charge (ALJIC) of the affected hearing offices will supply a list of all Connecticut hearing cases to the Hartford DO which meet the following qualifications:
- (1) the hearing has been pending for 160 days from the date of filing of the hearing request, and
 - (2) the hearing is not expected to be processed (i.e., a hearing decision will not be rendered) within 180 days from the date of filing of the hearing request, and
 - (3) the case does not meet any of the exceptions listed in the court order.
- C. Information for each case identified by the ALJIC in 1.B. above will contain:
- (1) Name of claimant, (2) Social Security Number (SSN), (3) the latest address and (4) date of hearing request.

2. District Office Procedures

- A. The Hartford DO will obtain the latest benefit amount and verify the address from its records, if it is the resident DO. If it is not, it will telephone the resident DO to obtain this information.
- B. Where the benefit amount is not available in the resident DO, the Hartford DO will obtain an estimated earnings record. Where the earnings record does not show a benefit amount, the Hartford DO will compute a benefit rate, based upon the alleged onset date and earnings as shown on the estimated earnings record. In the rare case where no earnings record or benefit information is available, the DO nearest the ALJ office where the case folder is located will be requested by the Hartford DO to send a representative to the hearing office to review the file and extract benefit amount information.

- C. Effective upon issuance of instructions, each district office and branch office in Connecticut will note the latest benefit rate information in the DO files for all title II disability cases where a hearing is requested in the event the case is later subject to the White judgment.

3. Payment Procedures

- A. The Hartford DO will initiate payment of monthly checks via special computer procedures. Payments will begin with the first full month after the month in which the 180th day falls. The first payment will be made in accordance with regular title II practice at the close of the month for which payment is due. Subsequent payments will be made on a monthly basis as regular title II benefits are paid. Payment may be initiated immediately by the district office; the approximate time between input of information into the system and receipt of the check by the claimant is usually about a week.
- B. In the event the final decision is totally unfavorable to the claimant (i.e., the disability claim is denied) notice of the decision will be sent by BHA to the Hartford DO. The Hartford DO will input into the computer system to terminate payments that have not yet accrued under the judgment.

4. Notices

A. Initial Payment Notice (Tab C)

A notice to the claimant will be sent by the Hartford DO at the same time that payment is initiated, to advise (1) of the reason for the payments and (2) that they will be considered overpayments in the event the final decision is unfavorable to the claimant. This notice will also include the information that, should the claimant have questions concerning the payment or his case, he should contact his local (resident) district office for further help or information. In the event that the resident DO cannot answer the question, it will contact the Regional Commissioner's office for further guidance.

B. Final Notice

After the hearing decision is rendered, a final notice will be sent to the claimant to advise of the overpayment (if a denial) or of any payment adjustments (if an allowance). These notices will be prepared by EDI Central Office.

5. Further Information

- A. Should systems or procedural problems develop, they will be brought to the attention of the Office of Program Operations and Bureau of Hearings and Appeals representatives responsible for the procedures, with such problems being resolved as expeditiously as possible.
- B. Detailed technical instructions for each office involved (all DO's in Connecticut, the Hartford DO, the Regional Commissioner's office, and the Bureau of Disability Insurance, Baltimore) will be prepared. These instructions will include information as to the nature of the court order, systems input instructions, and instructions for recovery of overpayments, as well as the final notices needed to advise the claimant.

AN IMPORTANT NOTICE CONCERNING YOUR HEARING REQUEST
Please Read Carefully

On October 29, 1976, the United States District Court for the District of Connecticut entered judgment against the Secretary of Health, Education, and Welfare in the case of George White, et al. v. David Mathews, Civil No. H-75-34. This judgment will effect the processing of your request for a hearing before an administrative law judge concerning your claim for disability insurance benefits.

Under the court's judgment, the Secretary of Health, Education, and Welfare is directed to hold a hearing before an administrative law judge and to issue a written decision regarding your claim within

- a) 180 days, if your request for hearing was filed before December 31, 1977;
- b) 150 days, if your request for hearing was filed on or after December 31, 1977, but before July 1, 1978;
- c) 120 days, if your request for hearing was filed on or after July 1, 1978.

In the event the time limit applicable to your hearing request is exceeded, the Secretary must, after July 1, 1977, grant prospective payments to you as though you were entitled to disability insurance benefits beginning with the month following the month in which the time limit is exceeded and ending with the month in which a written decision is issued. If these prospective payments are made to you, you should understand that they may be recovered from you by the Secretary if it is determined that you were not under a disability and entitled to disability insurance for any period in which these prospective payments are made.

You should also understand that the time limits imposed by the court's judgment will not apply if you

- a) directly cause a delay by your failure to provide essential information required to reach a decision,
- b) request a delay, or
- c) fail to appear for a scheduled hearing.

In addition, the time limit applicable to your hearing request will be extended if the administrative law judge as a result of evidence received at the hearing or in the course of his post-hearing review determines that a consultative medical examination or medical evidence in the possession of parties other than yourself is required for his decision. In this instance, the time limit will only be extended by the amount of time necessary to obtain this evidence.

Since the Secretary has established procedures which will automatically advise him if and when the applicable time limit has been exceeded, you need not contact the Secretary to initiate these payments. They will start automatically. If you wish to examine the court's judgment, you may do so by visiting the hearing office at the address indicated on the first page of this letter. In addition, you should, if you have questions, contact that same office.

N O T I C E

You are hereby notified that because:

- ☐ You failed to provide essential information for adjudication of your claim as follows,

- ☐ You failed to appear for a scheduled hearing on _____,

- ☐ You requested a delay of your hearing on _____,

your claim has been removed from coverage under the Judgment Order of October 28, 1976, in the matter of George White et al.

- ☐ Evidence adduced at the hearing or in the course of the post-hearing review, it was determined that a consultative medical examination or additional medical evidence in the possession of third parties will be required as follows,

your claim has been suspended from coverage under the Judgment Order of October 28, 1976, in the matter of George White et al. for the period of time required to complete this action.

Claimant Name

Mailing Address

Claimant Address

RC Office

Boston, MA.

You were previously advised of the court order issued by the U.S. District Court for Connecticut in the matter of George White et al, Civil Number H-7534. Since the final decision in your hearing has not been made within 180 days from the date you filed your request for the hearing, a special payment in accordance with the court order in the amount of _____ will be made to you beginning with the month of _____, 19 _____. This is the first full month after the month in which the 180 day period ^{cl ses.} / Payments will continue to be made monthly, until the hearing decision is rendered. The amount of the payment is an estimate and may not be the final amount if your claim is finally approved.

If it is found that you are disabled, you will continue to receive payments. If the hearing decision is that you are not disabled, you will no longer receive these checks. In that case, you could be required to reimburse the Social Security Administration the total amount of all such overpayments. You will be notified as soon as we reach a decision in your case.

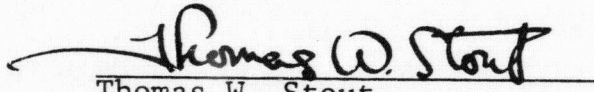
You are not required to do anything further at this time. If you have any questions, please telephone or visit any social security office. If you visit a social security office, please take this letter with you. This letter refers only to your hearing request under the Social Security Disability program.

Tals C

Certificate of Service

I HEREBY CERTIFY that on the 23rd day of March, 1977,
I served the foregoing Joint Appendix and Exhibits, by mailing
copies, postage prepaid to:

Raymond Richard Norko, Esquire
Legal Aid Society of Hartford
525 Main Street
Hartford, Connecticut 06103


Thomas W. Stout
Attorney
(301) 594-7007